

OBLIGATIONS OF DISTRICTS TO PROVIDE ATHLETIC ACTIVITIES FOR DISABLED STUDENTS

Education Alert
January 31, 2013

The U.S. Department of Education's Office for Civil Rights (OCR) issued an important "Dear Colleague" letter on January 25, 2013. The letter was intended to clarify school districts' legal obligations to provide students with disabilities equal access to extracurricular athletic activities.

The letter notes that disabled students have the right to equal *opportunity* to participate in their schools' extracurricular activities. Any failure to allow equal opportunity, according to OCR, is a violation of Section 504 of the Rehabilitation Act.

In this respect, schools must provide reasonable accommodations and/or modifications to ensure that disabled students are not prevented from participating in extracurricular athletic activities. OCR noted that this does not mean that a disabled student *must* be allowed to participate in a selective or competitive program. Rather, it states that schools simply must make sure that a student's disability is not an undue impediment to being chosen for, and/or to participate in, the activity.

OCR does not provide any concrete criteria on what reasonable accommodations and/or modifications are appropriate for disabled students. That is left to analysis for each individual situation. The agency does state, however, that schools are not required to provide accommodations or modifications that will *fundamentally alter* the nature of the extracurricular activity, and/or cause an undue hardship upon the school.

The most noteworthy component of the letter is OCR's comment that schools may need to start developing *parallel* or *different* athletic opportunities for disabled students. Even though it is ideal for a disabled student to participate in the school's regular sports program, OCR recognizes that this may not be possible for some students. In this regard, OCR says, "Students with disabilities who cannot participate in the school district's existing extracurricular athletics program—even with reasonable modifications or aids and services—should still have an equal opportunity to receive the benefits of extracurricular athletics. When the interests and abilities of some students with disabilities cannot be as fully and effectively met by the school district's existing extracurricular athletic program, the school district should create additional opportunities for those students with disabilities."

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OCR then states that schools should offer athletic activities that are “*separate or different*” than those offered through the normal athletic program, and that the activities for disabled students should be “*supported equally.*” To illustrate this new requirement, OCR references the availability of wheelchair basketball and tennis in some school districts. OCR also notes that while one school may not have enough disabled students to field an entire team, schools should look to develop “district-wide” or “regional teams” for this purpose. OCR also suggests that schools could develop male/female teams, or offer “allied” sports teams (where disabled and nondisabled students compete together).

In light of the OCR’s letter, school districts should now re-examine their athletic programs and identify the extent to which disabled students are participating in athletic activities. To the degree that a school determines that many disabled students are not participating in these activities, schools should consider creating new programs specifically tailored toward disabled students, either within the district itself or in conjunction with neighboring school districts. In either respect, OCR’s guidance imposes new and significant requirements for school districts.