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LEGAL UPDATE

February 6, 2013

To: Superintendents, Member School Districts (K-12)

From: Marko H. Fong, Assistant General Counsel *MF*

Subject: **OCR Guidance on Extracurricular Athletics for Students with Disabilities**
Memo No. 02-2013

On January 25, 2013, the United States Department of Education's Office for Civil Rights (OCR) released guidance¹ that significantly expands expectations for students with disabilities about participating in extracurricular sports. OCR is taking the position that, under Section 504 of the 1973 Rehabilitation Act (Section 504), schools not only must provide students with disabilities any needed aids and services to participate in existing district-sponsored extracurricular sports, it is also calling for districts to *develop additional extracurricular activities* for students with disabilities who are unable to participate in existing extracurricular sports. The guidance applies to all school-sponsored extracurricular sports at all age levels and all levels of competition or participation.

Pursuant to recommendations made by the United States General Accountability Office (GAO)² OCR included the following reminders for school districts:

1. Schools *may require a level of skill or ability to participate in an extracurricular sport*, but the selection or competition criteria themselves may not be discriminatory.

¹ Dear Colleague Letter from Office for Civil Rights on Extracurricular Athletics January 25, 2013
<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201301-504.html>

² Students with Disabilities: More information and Guidance Could improve Opportunities in Physical Education and Athletics, No. GAO-10519, at 1, 31 (June 2010).

- a. The district's legal duties under Section 504 (and by implication the Individuals with Disabilities Education Act (IDEA)) supersede any rules of associations, clubs, or leagues such as the California Interscholastic Federation (CIF).
 - b. Schools must adopt grievance procedures that meet due process standards to provide students with disabilities who have a grievance about access to an extracurricular sport to directly allege possible violations of Section 504.
2. Schools must consider requests for accommodation or access on a case-by-case basis. A coach may not refuse a disabled student full access or limit the student's participation because the student has a particular disability. The school must determine whether that particular student can be accommodated.
 3. Schools must make reasonable modifications and provide necessary aids and services to ensure an equal opportunity to participate, unless the district can show that doing so would result in a fundamental alteration to its program.³ OCR cites the example of a visual cue instead of a starter's pistol for a deaf sprinter as a reasonable accommodation and also suggests that the school's obligation extends to ensuring that the visual cue is available at any meets with other schools.

Other reasonable modifications might include allowing the disabled student to practice differently or having to provide a disabled student with specially modified equipment or off-field assistance to participate in the sport. The guidance does not address either academic eligibility or the use of medications or prosthetics that might affect competitive balance.

4. Schools must make necessary modifications and aids available regardless of the location of the activity. OCR uses an example of a student with diabetes who receives assistance with glucose testing and insulin administration during the school day. According to OCR, if the same student chooses to participate in a school-sponsored afterschool extracurricular activity, the district must make the accommodation available for the extracurricular sport regardless of the location of the activity.⁴
5. OCR recommends that if a student indicates an interest in participating in and benefiting from extracurricular sports, the IEP or 504 plan should specifically address possible accommodations for that student.
6. While many districts already conform to the above OCR recommended practices, OCR's guidance goes one step further by taking the position that disabled students who cannot be accommodated for an existing extracurricular sport *should still have an equal*

³ OCR cites "adding an extra base in baseball" as an example of a fundamental alteration. Page 7 OCR Letter on Extracurricular Athletics January 25, 2013).

⁴ OCR cites 34 CFR 104.37 (a) General. (1) A recipient to which this subpart applies shall provide non-academic and extracurricular services and activities in such manner as is necessary to afford handicapped students an equal opportunity for participation in such services and activities.

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's existing programs, the school district should create additional opportunities for those students.

OCR goes on to say that these "separate" extracurricular sports opportunities should be **supported equally**, as with the school district's other athletic activities. The guidance cites wheelchair tennis and basketball and mentions the possibility of regional teams as opposed to school-based teams to create new opportunities. OCR does not say that a disabled student who wants to play football must be given an alternate version of football. It says that the student must be provided a comparable opportunity for competitive athletic activity.

Final

OCR's recommendations serve as guidance only. As such, they are the Federal Department of Education's interpretation of existing Federal Law. They are not the direct product of specific court rulings or statutes or even regulations that specifically address access to extracurricular athletics for disabled students.

We recommend that Districts consult with Adaptive Physical Education teachers (APE), representatives of the disabled athletic community such as Paralympic groups and Special Olympics, and CIF (and other athletic administrative bodies), to identify and develop a range of modifications and aids to expand the participation of students with disabilities in extracurricular sports.

We also recommend possibly updating your District's 504 and Disabled Student policies and procedures to address participation in and accommodation for extracurricular activities.

Should you have questions about possible accommodation for a disabled student seeking to participate in an extra-curricular sport, grievance procedures under Section 504, or related policies, please contact any of our attorneys.