

Don't Overlook Your Child's Extracurricular Access Plan
Theresa Lynn Sidebotham
Telios Law PLLC
tls@telioslaw.com

Even when schools put in place an IEP or Section 504 plan for your student, they may not address extracurricular access. This can make it hard for your student to participate in extracurricular events. The problem can be obvious, such as a deaf student not being able to hear the starting gun in a sports event. Or the problem may be subtle, such as a high-functioning autistic student not being allowed to attend a drama convention because of potentially embarrassing behavior, or a student losing academic eligibility to play sports because of insufficient support on his IEP.

After a government report found that students with disabilities do not have equal opportunities to participate in extracurricular activities, the Office for Civil Rights issued Section 504 guidance on January 25, 2013.¹ This guidance clarified the law for Section 504 and to some extent, IDEA.

What does the law require? Under IDEA, a student's IEP must address the "special education, related services, supplementary aids and services, program modifications, and supports for school personnel to be provided to enable the student to, among other things, participate in extracurricular and other nonacademic activities." *See* 34 C.F.R. § 320(a)(4)(ii). While the OCR does not directly enforce IDEA, the guidance letter commented that, "In general, OCR would view a school district's failure to address participation or requests for participation in extracurricular athletics for a qualified student with a disability with an IEP in a manner consistent with IDEA requirements as a failure to ensure Section 504 FAPE and an equal opportunity for participation."

The guidance letter made the following points.

The school district may require a certain level of skill or ability in the activity for a student to participate; in other words, students don't automatically get to be on the team or play in games.

The school district must make reasonable modifications or provide aids and services to provide an equal opportunity to participate. But the modification does not have to be a fundamental alteration of the nature of the activity. For instance, adding an extra base in baseball would be a fundamental alteration. Allowing a visual cue for a track meet would not. A one-hand touch in swimming

¹<http://tinyurl.com/lyvjrvz>

for a one-handed student might or might not be a fundamental alteration, depending on whether it gave an unfair advantage.

Aids and services might include such things as providing insulin administration during an extracurricular event.

Where students with disabilities cannot participate in the existing program, the school district should create additional opportunities, such as disability-specific team sports.

The school district must adopt grievance procedures that provide for prompt and equitable resolution of complaints.

Section 504 supersedes any association rules (and associations themselves maybe subject to Section 504), so the school district cannot shelter behind the association.

What should parents do?

- Make sure that your student's 504 Plan or IEP addresses these issues up front, as you will have more success with a proactive discussion.
- You may need to educate your school district, as school districts are often not aware of these responsibilities.
- If you are having problems, you can consider a state level complaint or a due process complaint under IDEA.
- You can consider a school district grievance or a Section 504 complaint with the Office for Civil Rights.