# U.S. Department of Education

# Office for Civil Rights

# Dear Colleague Letter: Students with Disabilities in Extracurricular Athletics (January 25, 2013)

# Background and Fast Facts

## Background

On January 25, 2013, the Office for Civil Rights (OCR) released a Dear Colleague Letter ("Guidance") clarifying the existing obligations of school districts to provide students with disabilities an equal opportunity to participate in extracurricular athletics. You can find the Guidance at http://www.ed.gov/ocr/letters/colleague-201301-504.pdf.

## Why did ED Issue the Guidance?

The Guidance, based on a long-standing disability law, Section 504 of the Rehabilitation Act of 1973 (Section 504), and the Department's implementing regulation, was issued at the recommendation of the U.S. Government Accountability Office (GAO). A June 2010 GAO report found that students with disabilities participated in athletics at consistently lower rates than students without disabilities, and that schools lacked guidance on their responsibilities. That GAO report can be found at http://www.gao.gov/assets/310/305770.pdf.

## What does the Guidance say?

The Guidance says that students with disabilities have the right, under Section 504, to an equal opportunity to participate in their schools' extracurricular activities. Ensuring that students with disabilities are given the opportunity to play alongside their peers—both with and without disabilities—is at the heart of the Guidance.

## Does the Guidance Create New Legal Requirements?

No, the Guidance does not add new legal requirements. It explains existing legal requirements and provides examples to inform school districts and other covered entities about how OCR evaluates whether they are complying with their legal obligations.

ED's Section 504 regulation was issued in 1977 and has always applied to extracurricular activities, including athletic activities. 34 C.F.R. § 104.37. This regulatory provision is discussed in pages 6-12 of the Guidance.

## Does the Guidance Only Apply to Elementary and Secondary Schools?

Although the Guidance addresses K-12 activities, the main principles of inclusion and equal access it embodies apply to postsecondary schools as well. Generally, the Guidance also applies to interscholastic athletic associations.

## What Does the Guidance Say That School Districts Must Do?

A school district must provide students with disabilities an equal opportunity to participate in its existing extracurricular athletic programs. This means that a school district must not exclude students based on stereotypes and assumptions. It also means that a school district must make an individualized inquiry to determine if there are reasonable modifications, or necessary aids and services, which would allow a student with a disability the chance to take part in the activity. Examples could include:

- Using a light along with a starter pistol so that a deaf runner can compete; or
- Providing for, or assisting with, the administration of needed medicine like insulin so that a student with diabetes can take part in an after-school gymnastics club.

## Must School Districts Change Essential Elements of an Athletic Activity to Meet these Obligations?

No. The requirement to provide an equal opportunity does NOT mean:

- Changing essential elements that affect the fundamental nature of the game;
- Giving a student with a disability an unfair advantage over other competitors;
- Changing the nature of selective teams – students with disabilities have to compete with everyone else and legitimately earn their place on the team; or
- Compromising student safety.

The Guidance also notes that a school district need not provide a modification, aid, or service if doing so would put an undue burden on its program. In most cases, however, we believe that providing reasonable modifications and necessary aids and services should not be unduly burdensome.

## Does the Guidance Require School Districts to Create Separate, Parallel Extracurricular Athletic Programs for Students with Disabilities?

No. Where students with disabilities cannot be included in existing extracurricular athletic activities, even with reasonable modifications and necessary aids and services, the Guidance urges–but does not require–that school districts create additional opportunities for students with disabilities to participate in separate or different extracurricular athletic activities.

The Department's Office of Special Education and Rehabilitative Services issued a guidance document that, among other things, includes suggestions on ways to increase opportunities for children with disabilities to participate in physical education and athletic activities. That guidance, "Creating Equal Opportunities for Children and Youth with Disabilities to Participate in Physical Education and Extracurricular Athletics," August 2011, is available at http://www2.ed.gov/policy/speced/guid/idea/equal-pe.pdf.

## How can I get help from OCR?

OCR offers technical assistance to help schools achieve voluntary compliance with the civil rights laws it enforces and works with schools to develop approaches to preventing and addressing discrimination. A school should contact the OCR enforcement office serving its jurisdiction for technical assistance. For contact information, please visit ED's website at http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm.

A complaint of discrimination may be filed by anyone who believes that a school that receives Federal financial assistance has discriminated against someone on the basis of race, color, national origin, sex, disability, or age. The person or organization filing the complaint need not be a victim of the alleged discrimination, but may complain on behalf of another person or group. For information on how to file a complaint with OCR, visit http://www.ed.gov/ocr/complaintintro.html or contact OCR's customer service team at 1-800-421-3481 (TDD 1-800-877-8339).