





# *Section 504*



## ***Ensuring Accommodations and Nondiscrimination in Extracurricular & Non-Academic Settings***

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## ***Section 504***



- **Anti-discrimination statute**
- **Violations investigated by OCR**
- **Funding pulled for non-compliance**
- **Definition of impairment now very broad**
- **A student may qualify under Section 504 but not qualify for special education**



## ***Section 504 Provides:***

**“No *otherwise qualified* individual with a *disability* shall solely by reason of the disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”**



# ***ADA Amendments Act of 2008***

- **Effective January 1, 2009.**
- **Amended ADA and definition of disability in Section 504.**
- **A person with a disability is any person who has a physical or mental impairment which “substantially limits a major life activity”; or has a record of such impairment or regarded as having such.**
- **Now to be construed broadly.**







## ***Section 504 Extends Beyond the Classroom***

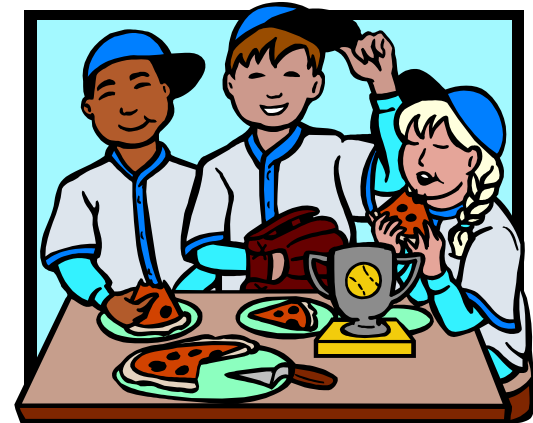
- If a service is provided to nondisabled students, the services must also be provided to children with disabilities.
- These services must be provided in nonacademic and extracurricular activities “in such a manner so as to afford students with a disability an equal opportunity for participation.”  
34 CFR 104.37(a)(1)





# ***Extracurricular Opportunities***

- Under Section 504, students with disabilities must be provided with an equal opportunity to participate in nonacademic services and extracurricular activities including, but not limited to:
  - After school recreational activities
  - Athletics
  - Counseling services
  - Special interest groups or clubs
  - Field Trips





## ***Prohibits Discriminatory Actions***

- **Failing to provide access to programs or facilities;  
or**
- **Imposing double standards for eligibility for  
participation**

### ***AMOUNTS TO DISCRIMINATION UNDER SECTION 504***

***Example*** - Excluding students with disabilities from after-school activities by failing to provide them with “late activity buses” that were provided to nondisabled students would likely amount to a Section 504 violation.



## ***Eligibility Issues***

**If a student requests accommodations to participate in an activity, the initial questions should include:**

- 1. Is the student otherwise qualified for the activity?**
- 2. Is the student already qualified for Section 504 services?**
- 3. If not, personnel should follow the procedures for identification and evaluation.**
- 4. If so, do the appropriate individuals have a copy of the Section 504 Plan or IEP?**

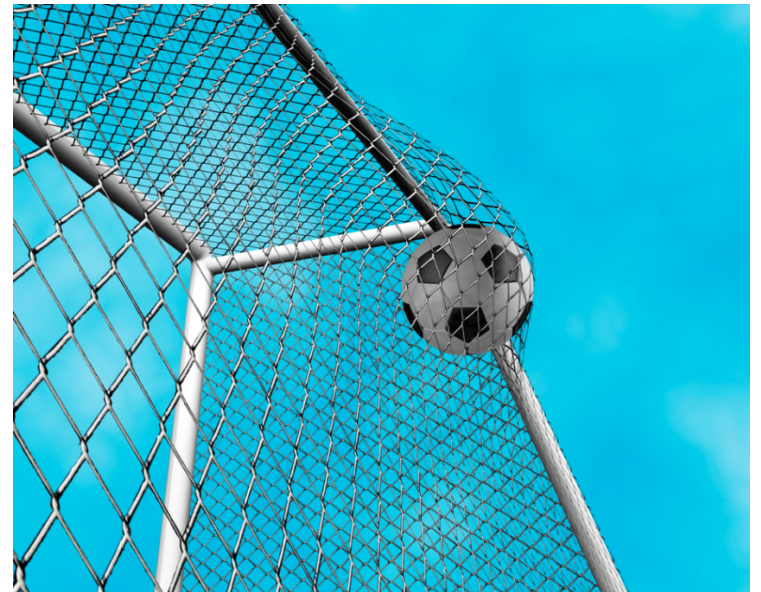






# *Eligibility Requirements Points to Keep in Mind*

- **Criteria should be related to the ability to participate in the program.**
- **BE CONSISTENT!**
- **Be sure to consider the nature of the affected student's disability when considering if eligibility requirements have been met.**





# ***Inconsistent Application of Eligibility Requirements***

## **EXAMPLE**

OCR found that an Alabama school district had discriminated against a high school freshman with a mobility impairment when it denied his request to invite a middle school student to homecoming. The district had stated that it would make no exceptions to its policy prohibiting students from inviting middle school students or individuals over 20 years old to school functions. OCR pointed out an article published in a local newspaper showing that the district recently permitted both a middle school student and a 21-year-old to attend previous high school proms. OCR noted that the student in this case, a ninth-grader who used a wheelchair, asked to invite a 14-year-old girl with cerebral palsy to the dance. The girl was two years behind in school due to absences resulting from her cerebral palsy. Had it not been for her disability, the girl would have been a high school student who was eligible to attend the dance. The key issue however, was that the district's selective enforcement of the prom date policy was discriminatory.

***Baldwin County (AL) School District 51 IDELR 141 (OCR 2008)***



## ***Eligibility Linked to Discipline***



- **Before excluding a student from an activity based on disciplinary records, consider whether the behavior problems are a manifestation of the student's disability.**
- ***Ontario-Montclair (CA) Unified Sch. Dist. 24 IDELR 780 (OCR 1996)***



## ***Eligibility Linked to Academic Performance***

As with disciplinary eligibility, district personnel should consider the nature of a student's disability and possible accommodations before deciding to exclude for failure to meet academic eligibility requirements.

### **EXAMPLE**

A district offered a three-day field trip for 8<sup>th</sup> grade students contingent upon all passing grades during a particular grading quarter. The affected learning disabled student passed all his classes except mathematics. The district responded by disallowing the student from attending the trip. In alleging discrimination, the parent argued that her son's disability prevented him from receiving a passing grade in that class. OCR rejected this argument, pointing to the student's IEP that was designed to meet the student's needs and included a 1:1 aide in math. Additionally, the academic requirement had been applied uniformly to all 8<sup>th</sup> grade students.

***Lindenhurst (NY) Union Free School District, 39  
IDELR 197 (OCR 2003)***



## ***ELIGIBILITY LINKED TO HEALTH/ SAFETY***

- District provided legitimate health and safety reasons for denying two students with mental retardation the opportunity to travel to ESPN Zone and Six Flags amusement park where there would be large crowds and expansive facilities.
- The District had also ensured that students participated in several other field trips and had additional opportunities for socialization with their non-disabled peers.

***Howard County (MD) Public School System 41 IDELR  
215 (OCR 2003)***





## ***ELIGIBILITY LINKED TO HEALTH/SAFETY***

**Elementary School went on a field trip to television station. One student, a ten-year-old mentally retarded student was excluded from participation on the field trip. School officials explained they made this decision out of concern for her safety. The student also had a rare progressive neuro-degenerative disorder affecting motor, sensory, perceptual and language functioning. Her doctor had advised that precautions be taken to protect her spleen and avoid abdominal trauma. Because of ambulatory problems, the officials were afraid that she would fall and injure herself. As a result, she was escorted throughout the school building by an adult or student who held her hand on school days.**



## ***ELIGIBILITY LINKED TO ABSENCES***

### **EXAMPLE:**

The complainant had alleged that the district discriminated against her daughter on the basis of her disability, stating that her 21 unexcused absences from volleyball practice were attributable to her disability. Under district rules, three unexcused absence resulted in being cut from the team. In its discussion, OCR made careful distinction between those absences appropriately attributed to the student's disability and the three absences arising from a three-day suspension for fighting (which was not a manifestation of her disabling condition.) In ruling that the district did not discriminate against the student, OCR made special note of the district's uniform application of the rule, as other nondisabled students had also been dismissed from team sports for violation of the same rule.

***Shelby County (AL) 37 IDELR 41 (OCR 2002)***

## ***ELIGIBILITY LINKED TO AGE***

- **Students are eligible for athletic contests if they are less than 19 years old on September 1 preceding the contest or *have been granted eligibility based on a disability* that delayed their education by at least one year.**





*Notice*



**Equal Opportunity for  
participation  
implies notice of opportunities  
reaching all students.**



## ***NOTICE***

- **School district violated its obligation to provide a homebound high school student with an equal opportunity to participate in extracurricular and non-academic activities.**
- **Student was not fully informed of all school activities.**
- **Equal access means access to all extracurricular and nonacademic activities, which necessarily includes proper notice on a consistent basis.**

***Hernando County (FL) Sch. District***  
***November 2010***





## ***NOTICE – INFORMATION THAT CAN BE EFFECTIVELY UTILIZED***

### **Example:**

OCR concluded that a Florida School district had not sufficiently communicated info about afterschool activities to students with qualifying disabilities and in violation of Section 504. Notably, the district had employed a large number of methods to communicate school activities to the student body which included: a marquee outside the school building; a regularly-updated website announcing all student activities; a scrolling system appearing on television classrooms; morning and afternoon audio announcements to the entire school; and an automated telephone messaging system. (continue on next slide).

***Polk County (FL) Schools, 54 IDELR 331 (OCR 2009)***



***Polk County (FL) Schools continued***

To supplement, the Special Education teacher sent home newsletters approximately once per month to her students' parents. In finding the district not in compliance, OCR acknowledged the numerous mechanisms through which the district attempted to communicate school activity, but emphasized that the information was not presented to the affected students in a way *that could be effectively utilized* because of the nature and severity of their disabilities; these students might have seen the information on the marquee or heard the information on the announcements, but could not understand this information independently. OCR pointed out that although the ESE teacher sent home information about the existence of such clubs and activities, the newsletter did not provide parents sufficient information on *how* to participate.

***Polk County (FL) Schools, 54 IDELR 331 (OCR 2009)***



## ***The meaning of “Otherwise Qualified” and “Reasonable” Accommodations***

- No *otherwise qualified* individual with a disability shall solely by reason of the disability, be excluded from participation in ...
- Qualifying disabled students must be provided with reasonable accommodations that allow them to participate.
- An accommodation is unreasonable if it would “fundamentally alter” the nature of the activity or “impose an undue hardship on the program



## ***Reasonable Accommodation***

OCR determined that a school district discriminated against a student with a qualifying disability when it did not allow her to try out for the cheerleading squad. The district high school required a 2.8 minimum GPA for cheerleading. The affected student's cumulative GPA was approximately 2.4. OCR found that the student's failure to obtain the required GPA was affected by her disability. In its analysis, OCR looked to the cheerleading requirements at surrounding schools (which varied) and other athletic teams within the school where the GPA requirements also varied. In concluding that the district discriminated against the student, OCR reasoned that in addition to the student's disqualification being attributable to her disability, and that she was otherwise qualified, a modification of the 2.8 GPA requirement *would not fundamentally alter* the nature of the program.

***Northshore (WA) 48 IDELR 199 (OCR 2006)***



## ***Unreasonable Accommodation***

The parents of a swimmer alleged discrimination against school district where the coach would not permit a student to leave the pool unpredictably during practices and meets to assuage her fear of drowning. Her intermittent fear of drowning caused her to flee the pool area during practices and competitions to calm her nerves whenever she suffered a panic attack. Because staying in the pool for extended time periods was an essential aspect of being a swim team member, a federal district court concluded that permitting a swim team member to leave the pool when she had panic attacks was not a reasonable accommodation. Any such accommodation would have fundamentally altered the nature of the swim team program.

***S.S. by Schor v. Whitesboro Cent. Sch. Dist., March 2012***



# ***Generally Required Accommodations***

- 1. If a student receives aides or additional services in the classroom, that student must generally receive the same services on a field trip or in an extracurricular activity.**
- 2. If a student is excluded from a field trip or activity for health or safety reasons, districts should generally consider alternative participation opportunities.**





## ***Third Party Programs***



- **Students with qualifying disabilities must generally receive equal opportunities to participate in non-educational services such as district-sponsored day care, afterschool care, and summer recreational programs.**
- **Under very limited circumstances, a district will be relieved of its duty to provide auxiliary services to a qualifying student under Section 504 when a third party provider a truly independent relationship must exist.**



# ***Independent Third Party***

- **Is the third party paying a facility rental fee? Discounted or FMV?**
- **Who is staffing the program?**
- **Who is running the administrative operation (marketing, collecting registrations, manages the program)?**
- **Is it a purely non-academic program?**



# *What if . . . Case 1*

- A deaf student wanted to attend a ballet performance at his high school. He asked the school district to provide him with a sign language interpreter for the performance. The district said it was the ballet company's responsibility to provide accommodations, and told the student to ask the company to provide someone to interpret. The student did not make the request.
- The district leased its theater and its dressing rooms to the ballet company, which funded, hosted, and organized the event. The contract and charges were consistent with the district's policies for leasing its facilities and rented the facility at a fair market value.
- Was the district obligated to provide an interpreter?
  - A. Yes.** The Section 504 requires districts to furnish services necessary to provide students equal participation in all services, programs, and activities. This took place on school property and is therefore a school service.
  - B. No.** Because of the relationship between the District and the ballet company, the ballet is not a district program.



## *What if . . . Case 2*

- A student was eligible for 504 services based on his classification as Emotionally Disturbed. His IEP required modifications that the student was to be the last golfer in the last group throughout the two-day tryout process for the High School Golf Team. The IEP also required a coach to monitor the student's group and remind him to concentrate and stay focused on each shot. The head coach objected and refused to comply with the accommodations, stating that it was important for golfers to be accustomed to golfing in different orders – as would occur in tournament play – and more importantly, that the encouragement required by the IEP on each shot would amount to coaching during play, a direct violation of the rules of golf.
- Was this a section 504 violation?
  - A. YES** – the request was a reasonable accommodation.
  - B. NO** – the request would fundamentally alter the nature of the program.



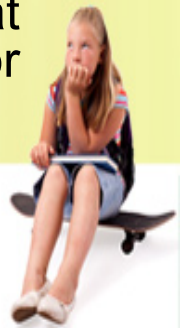


# What if . . . Case 3

- Mary, a Texas high school junior, who is eligible for 504 services based on her asthma is a member of the varsity cheerleading squad. Mary was selected during a very competitive try-out process and is one of the best cheerleaders on the squad. The squad practices 3 times per week for 2 hours each practice. Mary shows up for practice one day and informs that coach that she has forgotten her inhaler. Mary self-administers her medication, which is allowed under Texas law, but has forgotten her inhaler today. Mary insists that she will be fine at practice, but the coach tells her that she cannot participate in practice that day, needs to go home, and should not bother showing up again if she forgets her inhaler.
- Was this a section 504 violation?
  - A. YES** – Mary is otherwise qualified to be on the squad, she is a starting member and since she is approved to self-administer, she has the discretion to practice or not without her inhaler.
  - B. NO** – the request would fundamentally alter the nature of the program.
  - C. NO** – The coach may legally prohibit a disabled student from a nonacademic activity if teachers or administrators believe that participating will present an unacceptable risk to the student's health or safety.

What should the coach do next?

BACK TO  
SCHOOL





# *What if . . . Case 4*

- Jimmy is a eight-grader with autism and Tourette syndrome. Jimmy's parents have asked that he be accommodated to participate on the baseball team. They specifically request that he be allowed to miss some practices and games to manage health concerns and stress, be provided adult supervision after the activity until an adult or the activity bus picks him up, and have access to his cell phone during the activity. This would require hiring an additional staff member as the coach leaves promptly at the end of practice to make it in time to pick up his kids from day care and the school has a strict cell phone ban in place.

**SCHOOL**

- Are these requests reasonable accommodations?





## ***Final Thoughts***



- Evaluate accommodation requests on a case by case basis.
- Evaluate your current methods of communicating activities to your disabled student population, including those homebound.
- Look carefully at eligibility rules to ensure they are rationally related to the goals of the program
- Apply eligibility rules consistently.
- Keep thorough documentation on student try-out processes.
- Inform coaches and extracurricular program leaders of their duty not to discriminate and ensure 504 teams make arrangements (both procedurally and legally) to communicate necessary information to relevant non-faculty personnel.
- Work with parents and students to meet reasonable accommodation requests.



# *Section 504*



**The End**

