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# Stay Out of the Penalty Box: District Obligations to Students with Disabilities in Extracurricular Activities

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# Introduction

- Legal obligations under:
  - Individuals with Disabilities Education Act (IDEA)
  - Section 504 of the Rehabilitation Act of 1973 (Section 504)
- Hypotheticals applying the law



# IDEA

- Non-academic settings, 34 CFR § 300.117, 20 USC 1412(a)(5)
  - In providing or arranging for the provision of nonacademic and extracurricular activities, including meals, recess periods, and the services and activities set forth in § 300.107, each public agency must ensure that each child with a disability participates with nondisabled children in the extracurricular services and activities to the maximum extent appropriate to the needs of that child. The public agency must ensure that each child with a disability has the supplementary aids and services determined by the child's IEP Team to be appropriate and necessary for the child to participate in nonacademic settings.



# IDEA

- Non-academic services include:
  - Counseling services
  - **Athletics**
  - Transportation
  - Health services
  - **Recreational activities**
  - **Special interest groups or clubs sponsored by the school**
  - Referrals to outside agencies who provide assistance to disabled individuals
  - Employment

34 CFR § 300.107



# Section 504

- School district required to provide qualified student with a disability opportunity to benefit from the school district's program equal to that of students without disabilities.
- Free Appropriate Public Education (FAPE)



# Section 504

- School districts may require a level of skill or ability of a student in order for that student to participate in a selective or competitive program or activity, so long as the selection or competition criteria are not discriminatory.



# Section 504

- Prohibits school district from:
  - Denying a qualified student with a disability the opportunity to participate in or benefit from an aid, benefit, or service;
  - Affording a qualified student with a disability an opportunity to participate in or benefit from an aid, benefit, or service that is not equal to that afforded others;



# Section 504

- Prohibits school districts from:
  - Providing a qualified student with a disability an aid, benefit, or service that is not effective as one provided to others and does not afford that student with an equal opportunity to obtain the same result, gain the same benefit, or reach the same level of achievement in the most integrated setting appropriate to the student's needs;



# Section 504

- Prohibits school districts from:
  - Providing different or separate aid, benefits, or services to students with disabilities, to any class of students with disabilities, or to any class of students, unless such action is necessary to provide a qualified student with a disability with aid, benefits, or services that are as effective as those provided to others; and
  - Otherwise limiting a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.



# Hypothetical 1

- A student has a learning disability that qualifies as a disability, as defined by Section 504. When in middle school, this student enjoyed participating on her school's soccer team. As she enters the ninth grade, in high school, she tries out and is selected as a member of the high school's soccer team. The coach is aware of the student's learning disability and believes that all students with the student's particular learning disability would be unable to play successfully under the time constraints and pressures of an actual game. Based upon this assumption, the coach decides never to play the student during games. In his opinion, participating fully in all the team practice sessions is good enough.



# Hypothetical 1 Discussion

- Violation of Section 504: Do not operate on generalizations or assumptions.
- Rule: Decision to participate in games must be based on the same criteria the coach uses for all other players (such as performance reflected during practice)



# Hypothetical 2

- A high school student has a disability as defined by Section 504 due to a hearing impairment. The student is interested in running track for the school team. He is especially interested in the sprinting events such as the 100 and 200 meter dashes. At the tryouts for the track team, the start of each race was signaled by the coach's assistant using a visual cue, and the student's speed was fast enough to qualify for the team in those events. After the student makes the team, the coach also signals the start of races with a visual cue. Before the first scheduled meet, the student asks the school district that a visual cue be used at the meet simultaneously with the starter pistol sounds to alert him to the start of the race. The school district refuses the student's request because the school district is concerned that the use of a visual cue may distract other runners and trigger complaints. The coach allows the student to continue practicing with the team, but the student is not allowed to participate in meets.



# Hypothetical 2 Discussion

- Violation of Section 504: Modification did not alter fundamental nature of activity.
- Rule: While a school district is entitled to set its requirements as to skill, ability, and other benchmarks, it must provide a reasonable modification if necessary, unless doing so would fundamentally alter the nature of the activity.



# Hypothetical 3

- A high school student was born with only one hand and is a student with a disability under Section 504. This student would like to participate on the school district's swim team. The requirements for joining the swim team include having a certain level of swimming ability and being able to compete at meets. The student has the required swimming ability and wishes to compete. She asks the school district to waive the "two-hand touch" finish it requires of all swimmers at swim meets, and to permit her to finish with a "one-hand touch." The school district refuses the request because it would give the student an unfair advantage.



# Hypothetical 3 Discussion

- Violation of Section 504 (potentially): the school district must conduct an individual assessment.
- Rule: A school district must conduct an individual assessment to determine whether the requested modification is necessary for the student's participation, and must determine whether permitting it would fundamentally alter the nature of the activity.
- Does the requested modification (1) alter an essential aspect of the activity or (2) would give this student an unfair advantage?



# Hypothetical 4

- An elementary school student with diabetes is determined not eligible for services under the IDEA, but he is determined to have a disability under Section 504. In order to participate in the regular classroom setting, the student is provided glucose testing and insulin administration from trained school personnel. Later in the year, the student wants to join school-sponsored gymnastics that meets after school. The only eligibility requirement is that gymnastics members must attend the school district. The parents ask the school district to provide the glucose testing and insulin administration during gymnastics, but the school responds they are not required to provide these services to the student because gymnastics is an extracurricular activity.



# Hypothetical 4 Discussion

- Violation of Section 504
- Under Section 504, the school district must provide this during the school day to meet FAPE requirement.
- School district must provide this after school under Section 504 so that the student can participate in gymnastics club, unless doing so would be a fundamental alteration of the school district's education program.
- Because this assistance is available under IDEA for extracurricular activities, providing this assistance to the student would not constitute a fundamental alteration of the school district's education program.



# Hypothetical 5

- A 5<sup>th</sup> grade student diagnosed with autism spectrum disorder experiences tics when feeling anxiety that prevents the student from working. The condition also creates strong sensory needs in the student, who also must have occasional motor breaks to move about the classroom. The student was recently diagnosed with Tourette Syndrome and frequently struggles with motor, vocal, and facial tics, especially when anxious. The student is eligible for special education services under IDEA.



# Hypothetical 5

In February, the student's parents emailed a list to the school psychologist of supplementary aids and services they believed were necessary for the student to participate in extracurricular activities, to be discussed at the next IEP meeting. The list included:

- Being able to miss practices/games to manage stress and health concerns;
- Be provided adult supervision after the activity until an adult or the activity bus picked her up;
- Have access to her cell phone during the activity.



# Hypothetical 5

In April, the parents met with the middle school activities director and special education coordinator to discuss the student's participation in volleyball and after-school clubs. A Section 504 Plan was drafted, but did not include the suggested aids and services requested by the parents. In May, the parents met with the special education coordinator to discuss supplementary aids and services required for the student to attend a class graduation party.



# Hypothetical 5

The school district asserted it was not responsible for accommodating the student's attendance at the party because the party took place off-site, outside the normal school day, and was hosted by the parent-teacher organization, a private group.

*Independent School District No. 12 v. Centennial*, 788 N.W.2d 907 (Minn. 2010)



# Hypothetical 5 Discussion

- Did the school district violate Section 504 by not including the suggested aids/services requested by the parent?
  - IDEA does not permit parents to unilaterally dictate the content of an IEP.
  - § 300.107(a) states that a school district must provide supplementary aids and services as “determined by the student’s IEP Team.”
  - IEP Team determines if an extracurricular and nonacademic activity is appropriate, and which supplementary aids and services are appropriate and necessary to participate in these activities.



# Hypothetical 5 Discussion

- Did the school district violate IDEA/Section 504 by not allowing supplementary aids/services for the graduation party?
  - Language of the statute does not require extracurricular and nonacademic activities to have an educational benefit
    - Minnesota Court reasoned: We don't require non-disabled students to prove an educational benefit for extracurricular and nonacademic activities, so requiring a disabled student to prove an educational benefit would not give the disabled student an "equal opportunity."



# Hypothetical 6

- A student with an IEP wants to attend a choir concert after school. During the school day, the student has a 1:1 paraprofessional. The parents make a request to the school district for the paraprofessional to accompany the student to the choir concert.



# Hypothetical 7

- A student with Emotional Behavioral Disorder has an IEP, and wants to attend an after school program sponsored by the school district that provides activities for students to do until the end of the regular business day. It acts like a “daycare” for students and there is limited supervision. The student wants to attend the program, but the school district is concerned about the student becoming physically aggressive and the fact there is limited supervision. How should the school district respond?



# Hypothetical 8

- A student is disabled and confined to a wheelchair. The student has a 504 Plan and wants to participate in the school district's basketball team. The student understands she may not be able to participate in games, but wants to learn how to play the sport and participate in practice.



# Hypothetical 8 Discussion

- Can the school district reasonably accommodate the student?
  - Does it change the essential elements that affect the fundamental nature of the game or activity?
- 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 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 students with disabilities.



# Hypothetical 8 Discussion

- In these circumstances, the school district shall:
  - Offer students with disabilities opportunities for athletic activities that are separate or different
  - Support programs equally
  - When a school district is too small to create a team, (1) develop district-wide or regional teams for students with disabilities; (2) mix male and female students with disabilities on teams together; or (3) offer “allied” or “unified” sports teams on which students with disabilities participate with students without disabilities.



# Hypothetical 9

- A student with a traumatic brain injury wants to participate on the high school chess team. The student forgets the rules of chess and occasionally needs someone to tell him the rules. The student's parents really want him to participate on the chess team as they feel it is good for his brain to learn how to play such a challenging game.
  - Should the school district allow the student to continue to be on the chess team?



# Hypothetical 10

- A student with mobility issues with a 504 Plan wants to participate on the golf team. Due to the student's disability, the student requests to use a golf cart instead of walking when playing golf, including during official meets.
  - Should the school district accommodate the student?



# Transportation

- Transportation is a “related service” under the regulations at 34 CFR §300.34(a) and (c)(16).
- When does a child with a disability have a right to transportation to and from school-related activities that occur outside of normal school hours, such as community service activities that are required by the school district?
  - Depends on whether the IEP Team has included transportation as a related service in the child’s IEP to enable the child to benefit from special education and related services.
    - If the IEP Team determines transportation is included, then it should include transportation for required after-school activities, as well as for activities necessary to afford the child an equal opportunity to participate in extracurricular activities.



# Overview

- **IDEA**
  - Does the IEP require participation in nonacademic/ extracurricular activities to access FAPE?
  - Flowchart
- **Section 504**
  - Equal opportunity to participate



# 4 Rules to Follow

- The decision to participate in games must be based on the same criteria the coach uses for all other players (such as performance reflected during practice).
- While a school district is entitled to set its requirements as to skill, ability, and other benchmarks, it must provide a reasonable modification if necessary, unless doing so would fundamentally alter the nature of the activity.
- Does the requested modification (1) alter an essential aspect of the activity or (2) give this student an unfair advantage?
- School districts must provide services to students under Section 504 in after school extracurricular activities if they do not fundamentally alter the school district's education program.



# Overview

- Be proactive!
- Conduct a case-by-case analysis.
- Involve relevant school district staff in decision-making.
- Don't avoid the conversation.
  - Ask what extracurricular/nonacademic activities the student is participating in
  - Then turn the discussion to what services/support the student needs to have an equal opportunity for participation



# Overview

- Equal access does not equal guarantee
  - A special education student does not have an absolute right to participate in extracurricular activities solely due to disability.



# Questions?

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