



## **Fact Sheet**

### **The Obligations of School Districts Regarding Nonacademic and Extracurricular Activities for Students with Disabilities<sup>1</sup>**

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### **Introduction**

A frequent issue of contention between families of children with disabilities and school districts is the extent to which districts are required to provide services to students to enable them to participate in nonacademic and extracurricular activities. School districts, and for that matter, families and their representatives, are not always clear as to whether school districts have the same obligations under the Individuals with Disabilities Education Act (IDEA), Section 504, and the Americans with Disabilities Act (ADA).

School districts are required to provide services to students so that they can participate in nonacademic and extracurricular activities, but the requirements under the IDEA and Section 504/ADA are not identical. Under the IDEA, students have the right to participate in nonacademic and extracurricular activities “to the maximum extent appropriate.” 34 C.F.R. 300.117. In implementing this requirement, school districts must provide supplementary aids and services and programmatic modifications and supports to staff that will enable the student to participate in these activities with other students with and without disabilities. The IDEA does not qualify its requirement by location, time, or other factors; if the event is school or school district-sponsored, and the student has services such as an aide or transportation on his or her IEP, the district must provide these services no matter when or where the event takes place. Students are also entitled to services and to reasonable accommodations or modifications under Section 504. If the event is not school-sponsored but takes place on school grounds, the IDEA does not govern, but Title III, the public accommodations title of the Americans with Disabilities Act will likely apply, and depending on the event sponsor, it is possible that Section 504 will apply as well. This month’s Fact Sheet will explore these issues in more detail.

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<sup>1</sup> This fact sheet does not address interscholastic athletics; see NDRN Fact Sheet for December, 2006 (Interscholastic Athletics: A Circuit-by-Circuit Review of Cases Involving Students with Disabilities) for information regarding this topic.

## Regulations

The IDEA regulations address participation by students with disabilities in nonacademic and extracurricular activities. 34 C.F.R. 300.117 states:

In providing or arranging for the provision of nonacademic and extracurricular services and 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.

34 C.F.R. 300.107 requires states to ensure that each public agency takes steps, "including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP Team," to provide nonacademic and extracurricular activities in such a way that children with disabilities are afforded "an equal opportunity for participation in those services and activities." 34 C.F.R. 300.107(a). The regulation states that nonacademic and extracurricular activities "may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available." 34 C.F.R. 300.107(b).

Finally, 34 C.F.R. 300.320, the regulation regarding IEP development, contains yet another requirement regarding supplementary aids and services, as well as a requirement regarding program modifications and supports for school personnel to help students with disabilities take part in nonacademic and extracurricular activities. 34 C.F.R. 300.320(a)(4)(ii) mandates the provision of these aids, services, and supports in order to enable the student:

To be involved in and make progress in the general education curriculum...and to participate in extracurricular and nonacademic activities; and

- (iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section.

Some districts may attempt to read 34 C.F.R. 300.117 in isolation and assume that a school administrator may determine what level of participation in an activity constitutes the “maximum extent appropriate” for a particular student. However, this would negate the mandate of 34 C.F.R. 300.320 that the IEP team determine the supplementary aids and supports and program modifications and supports for school personnel that would enable the student to participate in nonacademic and extracurricular activities. It is clear that these two provisions must be read together. The IEP team must determine what aids, services, program modifications or supports will enable the student to participate in both academic and nonacademic and extracurricular activities to the maximum extent appropriate, and then include those aids, services, modifications and supports on the student’s IEP.<sup>2</sup> If the student’s IEP is truly individualized, it should include a list of the particular nonacademic and extracurricular activities in which the team, with the student’s input, has determined the student should participate, along with a statement of the particular supports he or she needs to participate in each of the activities.

The Section 504 regulation is similar to the IDEA regulations. 34 C.F.R. 104.34(b), which governs nonacademic settings states: “In providing or arranging for the provision of nonacademic and extracurricular services and activities set forth in Sec. 104.37(a)(2), a recipient shall ensure that handicapped persons participate with nonhandicapped person in such activities and services to the maximum extent appropriate to the needs of the handicapped person in question.” 34 C.F.R. 104.37(a)(2) states that nonacademic and extracurricular activities “may include counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the recipients, referrals to agencies which provide assistance to handicapped persons, and employment of students, including both employment by the recipient and assistance in making available outside employment.”

### **Caselaw and Office of Special Education Programs**

Although most of the law that has accumulated in this area is in the form of Office for Civil Rights rulings, a few judicial and hearing decisions and one Office of Special Education (OSEP) policy letter shed some light on the issue. In 1993, OSEP addressed the question of whether the “stay put” provision applies to extracurricular activities; i.e., whether or not a student with disabilities had the right to continue to participate in an extracurricular activity while a due process hearing was pending on the issue of the appropriateness of his IEP, when his

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<sup>2</sup> Under Section 504, however, the decision about participation in nonacademic and extracurricular activities does not appear to have to be made by the team. See, e.g., *Dearborn (MI) Public Schools*, Office for Civil Rights (June 26, 2001), in which a school district resolved a complaint with a commitment that it would provide seven days’ advance notice whenever the student’s teacher determined that the student could not participate in assemblies, work study programs, field trips or other special events, and that it would provide notice if the teacher made any changes in the student’s job site.

poor grades would otherwise have disqualified him from being eligible to participate. OSEP's response was straightforward: If the activity is included in the student's IEP, then the student has a right to continue to participate; if not, then the student does not have a right, under Part B of the IDEA, to participate. However, OSEP noted, even if the student does not have a right to participate under the IDEA, denial of a right to participate in the extracurricular activity could amount to a violation of Section 504. *Letter to Heldman*, Office of Special Education Programs (July 1, 1993), 20 IDELR 621.

In a case that did not involve the IDEA but has implications for school-related nonacademic and extracurricular activities, the United States Court of Appeals for the Fourth Circuit barred a 12 year old who had AIDS from participating in a group karate class, finding that his participation created a direct threat that posed a significant risk to the health and safety of other participants, and that the karate school's offer to teach the child privately was a reasonable accommodation. The karate school taught the traditional Japanese, combat-oriented martial arts form of karate, and participants often sustained bloody injuries. *Montalvo v. Radcliffe*, 98-1169 (4<sup>th</sup> Cir. 1999); 29 IDELR 896. It seems clear that if a student's participation in an activity would pose a significant risk to the health or safety of the student or others, an IEP team will find that no level or a very low level of participation is appropriate, unless there are supports or services that can minimize the risk. OCR has addressed health and safety issues, as will be discussed below.

A Wisconsin student with Asperger's Syndrome lost a due process hearing on the issue of the district's refusal to permit him to attend a three day extracurricular trip to Washington, D.C. The school had 175 eighth graders; 23 of them were going to attend the trip. In order to attend, students were required to display satisfactory behavior for the semester prior to the trip. The student's behavior was not satisfactory for the semester before the trip. He was denied permission to attend, and the district, after considering waiving the behavior requirement because of the student's disability, decided not to because of the safety and welfare of the student and others. The trip was going to be very fast-paced with long days, and because of heightened security at airports and government buildings, the district determined that if the student lashed out because of the stress of the pace and length of the trip, it could be a safety problem for himself and others. The hearing officer determined that the trip was not required in order for the student to receive a free appropriate public education; rather, it would be for enrichment or maximization of the student's educational opportunities, which is not required under the IDEA. The decision does not say if the IEP team met to discuss whether any aids, services, or supports were available that might minimize the stress and help the student cope effectively on the trip. Instead, the hearing officer merely noted that the student was taking a new medication but that was insufficient to establish that the student would be safe from behavioral outbursts on the trip. *New Berlin School District*, Wisconsin State Educational Agency, LEA-02-021 (April 15, 2002), 36 IDELR

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In a case recognizing the potential harm to students of being excluded from activities with their nondisabled peers, a magistrate judge in Maine recommended against dismissal of ADA, Section 504 and state law claims by the parents of a student who had been forced to leave a school dance. The administrators thought she was a sixth-grader, and the dance was for seventh and eighth-graders only. The student had multiple disabilities and was considered a seventh grader, although she was placed in a special education class that included sixth and seventh graders. She and her mother had specifically been told by her teacher that she could attend the dance. *Lacey Smith v. Maine Administrative District No. 6*, 00-284-P-C (D.Me. 2001); 34 IDELR 201.

A district court upheld the exclusion of a student from a field trip in a case involving a student with attention deficit hyperactivity disorder. The court found that the district had a legitimate concern that the student, a self-proclaimed Green Bay Packers fan, would misbehave, since he had bragged that he would make a disrespectful comment to a member of the Minnesota Vikings with whom the group was going to have lunch. Therefore, the court found no violation of the ADA. *Sonkowsky v. Board of Education for Independent School District No. 721*, 00-2700 (D, Minn. 2002), 36 IDELR 184.

### **Office for Civil Rights<sup>3</sup>**

The Office for Civil Rights (OCR) has addressed nonacademic and extracurricular activities on a number of occasions. The Office has held that failure to provide late bus transportation to a student with disabilities, even though the district did not provide late bus transportation to any of its students, denied him equal opportunity to participate in extracurricular activities, since he was placed by the district in this out-of-district school far from his home. *Carmel Cent. (NY) Sch. Dist.*, Office for Civil Rights (September 30, 1993), 20 IDELR 1177. OCR also has dealt with the issue of a district failing to provide notice of field trips to self-contained special education classes, finding that the district's failure to provide the same notice to parents of children with and without disabilities is a violation of Section 504. *Mt. Gilead (OH) Exempted Village Sch. Dist.* Office for Civil Rights (August 13, 1993), 20 IDELR 765. Additionally, OCR has dealt with potentially discriminatory eligibility standards for extracurricular activities, finding that students with disabilities were more likely to be excluded from a school district camping trip that required students to maintain certain behavior requirements in order to be eligible to participate. *Ontario-Montclair (CA) Unified Sch. Dist.*, Office for Civil Rights (February 7, 1996), 24 IDELR 780.

OCR has made clear, in the context of a discussion of field trips, that if

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<sup>3</sup> This section includes a representative selection of significant OCR rulings; it is not a complete survey of all OCR rulings issued regarding nonacademic and extracurricular activities.

students need related aids or services to participate in a school's program, the services must be provided by the school, not the parent. *Ventura (CA) Unified Sch. Dist.*, Office for Civil Rights (March 11, 1991), 17 IDELR 854. See also: *Calcasieu Parish (LA) School Board*, Office for Civil Rights (January 21, 2005), 44 IDELR 49 (District violated Section 504 by requiring parents of students with insulin-dependent diabetes to attend field trips with their children). A school district may not require the parent of a student with a disability to accompany the student on a field trip when a similar requirement is not made of parents of students who do not have disabilities. *San Saba (TX) Indep. Sch. Dist.*, Office for Civil Rights (August 8, 1996), 25 IDELR 755.

OCR has also ruled that even if an IEP does not require one-to-one assistance to support a student in extracurricular activities, the district is obligated to determine under Section 504 whether the student needs any services to participate in those activities. See, e.g. *Winooski (VT) School District*, Office for Civil Rights (January 1, 2006), 46 IDELR 172 (IEP did not require one-to-one aide for participation in student council and ski activities, but district was obligated to determine if any services were necessary for student's participation).

OCR has addressed situations in which trips have been announced by school districts but are not sponsored by the districts. For example, in a case in which a school district provided notice of a field trip to Italy that was not sponsored by the district, OCR found that a student with a visual impairment had not been excluded from the trip on the basis of her disability. She had expressed interest in the trip but had never followed up with the outside agency that was making the arrangements for the trip; the district did not exclude her from the trip. *Woonsocket (RI) Pub. Schs.*, Office for Civil Rights (December 16, 1997), 28 IDELR 880.

OCR has also weighed in on budget issues. In *Montebello (CA) Unified Sch. Dist.*, Office for Civil Rights (May 28, 1993), 20 IDELR 388, a school district sponsored field trips for regular education students at the end of the school year in which special day class students did not participate. Special day class students were only given opportunities for field trips planned and organized by their teachers and funded through the special education budget, but when the overall budget was cut, the special education teachers had no funding left for field trips. OCR found a violation of Section 504.

When the safety of the student with disabilities or others is at stake, the Office for Civil Rights has been less likely to find a violation of Section 504 and more likely to accede to the school district's exercise of its discretion. For example, in *Consolidated High Sch. Dist. #230 (IL)*, Office for Civil Rights (September 22, 1993), 20 IDELR 1076, OCR found that a district did not violate Section 504 or Title II of the ADA when it screened a student with a mental disability and autistic tendencies prior to permitting her to attend a school-sponsored retreat on substance abuse, and then determining that she should not attend some of the

small group sessions based on how agitated and upset she became during the first small group session she attended. OCR found that the district's decisions were made so as to permit the student to benefit as fully as possible from the program.

In *North Hunterdon/Voorhees Regional (NJ) High Sch. Dist.*, Office for Civil Rights (May 24, 1996), 25 IDELR 165, OCR found no violation of Section 504 in a situation in which the school nurse had determined that a student with cerebral palsy and a seizure disorder could not attend her job placement sessions on three occasions when she had experienced seizures and was showing after-effects in the form of poor coordination and dizziness. OCR found that the district did not deny the student the opportunity to participate in job sampling and placement activities on the basis of her disability.

OCR did not find a violation of Section 504 in a school district's refusal to permit 14 year old twins with mental retardation to attend an extended school year services program field trip to ESPN Zone and Six Flags Amusement Park; the field trips were denied to the particular program the students attended as a whole, not just to the students themselves. The district offered a variety of field trips during the summer and not every extended year services program attended each field trip. OCR found the district's health and safety rationale to be legitimate; supervision of the students in the program attended by the twins had proven to be an issue in the past at large crowded facilities. *Howard County (MD) Public School System*, Office for Civil Rights (December 4, 2003), 41 IDELR 215.

However, in an earlier ruling, OCR had found that if a student can participate safely in a field trip with accommodations, then a district's reliance on safety concerns to exclude the student rather than providing the accommodations constitutes a violation of Section 504. *Quaker Valley (PA) School District*, Office for Civil Rights (August 19, 1986), 352 IDELR 235. In *Quaker Valley*, the student had a degenerative neurological disorder which caused her to have an unsteady gait. OCR found that the only accommodation she needed on field trips was the same accommodation she received at school, which was an adult to hold her hand when she walked from one place to another. Clearly, if a safety issue can be addressed through a reasonable accommodation, Section 504 requires that the student be provided with the accommodation in order to be able to participate in the activity in question.

### **Putting it all Together**

What does this all mean in concrete terms for students? What happens when the first grade class goes on a field trip to a farm and a student who uses a wheelchair needs a lift bus? Does a school district have to provide a one-to-one aide to a student with disabilities who wants to stay after school to work on the yearbook? Must a district always provide transportation to students with

disabilities who stay after school for extracurricular activities? What obligation does a school district have to a student with diabetes who sings in the choir when the choir takes its annual weekend trip to perform a concert at an amusement park, then stays overnight? Does a school district have to provide nursing services to a medically fragile student with multiple disabilities for the duration of the annual three day/two night outdoor education trip for sixth graders? Does a school district have to provide services to a student who wants to participate in an activity sponsored by an organization that is using the school building but is not associated with the school?

If a student's IEP includes transportation as a related service, then the IDEA clearly requires the district to provide transportation to and from field trips. When the fifth grade class goes to a farm, the school district must ensure that accessible transportation is available. Section 504 imposes this requirement as well. Field trips are often tied to the units that students study; they usually occur during the school day. For example, the first grade class may finish a unit about animals, then take the farm trip to see and pet farm animals and milk a cow. To the extent it is helpful, attorneys and advocates can argue that the field trips are part of the curriculum, not extracurricular, and therefore, that they are part of a free appropriate public education for the student. For students with Section 504 plans, this may get decisions about field trips in front of the 504 team, rather than just a teacher or administrator who otherwise might decide unilaterally whether or not a student will participate in a trip; contrary to the requirement of the IDEA regulations that the IEP team determine supplementary aids and services that will enable a student to participate in nonacademic and extracurricular activities, it is not clear that Section 504 requires decisions about level of participation in nonacademic and extracurricular activities to be made by the Section 504 team.

It is important to note, though, an OCR ruling in which OCR found no Section 504 violation when a student was excluded from a fifth grade academically-related field trip to a museum because the trip was part of the regular social studies curriculum, and the student was not participating in a general education social studies class. *Troy (MI) Sch. Dist.*, Office for Civil Rights (April 8, 2003), 39 IDELR 162. See also: *La Conner (WA) Sch. Dist. No. 311*, Office for Civil Rights (August 31, 1998), 30 IDELR 155 (No Section 504 violation in situation in which fifth grade student with autism was excluded from field trip because trip was part of fifth grade art curriculum, and student was not participating in that curriculum).

If a student wishes to participate in an extracurricular activity, such as production of the school yearbook, it should be reflected on his or her IEP, along with any needed services, including late transportation. OSEP and OCR have frequently addressed the issue of transportation for students with disabilities who wish to participate in extracurricular activities. This issue was addressed in a previous NDRN Q&A. See: *Transportation of Students with Disabilities: Least Restrictive Environment and Extracurricular/Nonacademic Activities*, February,



2006.

The student with diabetes who is insulin-dependent and needs a trained person with her to provide services or administer glucagon if necessary has to have the same opportunity to attend the overnight choral trip as a student without disabilities. Since OCR has made it clear that parents cannot be forced to provide necessary services to their children, the school district must take responsibility for providing a person who can do so. The district cannot argue that it does not provide staff on weekends or that it is too expensive to make a person available. If the trip is a school-sponsored activity and the district provides the services and supports during the school day or would be obligated to provide the services and supports during the school day if the student needed them, then the district must provide the services in order to give the student with the disability an equal opportunity to participate in the activity.

It seems clear that a district must provide nursing services to a student who needs such services in order to attend an annual outdoor education sixth grade trip. This three day event with two overnights is part of the curriculum; it replaces the three days of in-school education that would otherwise occur. The student is entitled to nursing services for the entire trip. The fact that it reaches beyond traditional school hours should not make a difference; the trip is an educational activity, and the district must ensure that the student has the nursing services he needs in order to participate. Would it make a difference under the IDEA if nursing services were not on the student's IEP? Presumably, under the IDEA, the district would not be obligated to provide a service on the trip that it does not have to provide to the student in school if the service is not on his or her IEP.

However, what if the service is not on the IEP because the service is one that the student does not need during the school day, but does need at night? For example, what if the student uses oxygen only at night, and needs a nurse to administer and monitor the oxygen? Under the IDEA, an attorney or advocate would have to argue that a nurse should be provided because access to the overnight portion of these three days of outdoor education is necessary to the overall provision of a free appropriate public education to the student. Realistically, this argument is unlikely to succeed; it will be difficult to convince a hearing officer or a judge that what happens during the late afternoon and evening portions of two days of the trip are so fundamental to the student's education that he or she will be denied a free appropriate public education without access to them. Under Section 504, however, an attorney or advocate could argue that in order to have an equal opportunity to participate in the activity and obtain the full educational benefit offered by the outdoor education trip, the student would need to have a nurse at night, and that provision of the nurse is a reasonable accommodation. This argument may be more likely to succeed, especially in light of the OSEP policy letter making clear that even if students are not entitled to services under the IDEA, they may be entitled to services under Section 504. *Letter to Heldman*, Office of Special Education Programs (July 1,

1993), 20 IDELR 621.

What are the school district's obligations if an activity occurs at a school but is not sponsored by the school? What if the school provides notice of an activity that is not sponsored by the school district and takes place elsewhere? If the activity occurs at a school but is not sponsored by the district, the student would not be entitled to services under the IDEA or Section 504 from the school district. However, if the sponsoring organization is a federally-funded or federally-conducted entity, then that organization would be subject to Section 504 and would be required to make reasonable accommodations. Further, the sponsoring organization would likely be required to comply with the ADA, so it is probably that the student would have a right to services or accommodations that would enable him or her to participate.

As the *Woonsocket Rhode Island* OCR decision makes clear, if a school district notifies students of off-site activities or trips but does not sponsor those activities, the district will not be responsible for the provision of services the student may need in order to participate. However, the sponsoring organization will likely be responsible under the ADA and, depending on its funding source, Section 504.

### **Conclusion**

The participation of students with disabilities in nonacademic and extracurricular activities raises complicated questions for a variety of reasons. Access to such activities, level of participation, transportation, types of accommodations and supports, different requirements under the IDEA and Section 504, cost of accommodations, availability of support personnel during after-school or non-school hours—these are all issues that arise frequently, and they span all types of disabilities and all types of nonacademic and extracurricular activities. Attorneys and advocates can use the IDEA, Section 504, and the ADA to support a student's participation in curricular and extracurricular field trips, nonacademic activities, and extracurricular events and activities.

