



MEMORANDUM

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TO School District Clients and Friends

FROM Maree Sneed
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SUBJECT **Office for Civil Rights' Guidance Requires School Districts to Provide Students with Disabilities Equal Opportunity to Participate in Athletics**

Do students with disabilities in your school district have equal opportunity to participate in extracurricular athletics?

New guidance from the U.S. Department of Education Office for Civil Rights (“OCR”) clarifies that all public school districts must ensure students with disabilities have equal opportunity to participate in athletics, and offers guidelines on the steps school districts must take to meet that requirement. Dear Colleague Letter (Jan. 25, 2013), available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201301-504.pdf>. The OCR guidance responds to a June 2010 U.S. Government Accountability Office (“GAO”) report, which found that “students with disabilities participated in athletics at varying rates, but at consistently lower rates than students with disabilities”, and recommended that OCR provide guidance about how to expand participation. GAO, *Students with Disabilities: More Information and Guidance Could Improve Opportunities in Physical Education and Athletics* (June 2010), available at <http://www.gao.gov/assets/310/305770.pdf>.

The overall message of the OCR guidance is that school districts must take steps to ensure that students with disabilities have equal opportunity to participate in extracurricular athletics, defined as “club, intramural, or interscholastic (*e.g.*, freshman, junior varsity, varsity) athletics at all education levels”. More specifically, the guidance has three main lessons for school districts:

- *Avoid generalizations and stereotypes.* Student participation in extracurricular activities must be determined on a case-by-case basis. For example, a coach should not simply assume that a student’s learning disability prevents her from participating in a lacrosse game. The student’s ability to participate must be assessed individually based on the same criteria applied to all students.

- *Conduct individualized inquiry to determine whether modifications to the activity can be made without fundamentally altering the competition.* School districts must consider whether reasonable modifications can be made to the competition to provide a student with a disability equal opportunity to participate. As an example, the OCR guidance states that if a hearing impaired student wants to participate in a track meet, a visual cue could be used to signal the start of the meet in addition to the “starting gun” without fundamentally altering the competition. Even if a modification would fundamentally alter the nature of the competition, the school district must provide the student with aids and services to the extent feasible.
- *Provide separate opportunities where a reasonable modification that does not fundamentally alter the competition is infeasible.* While “[t]he provision of unnecessarily separate or different services is discriminatory,” the OCR guidance recognizes that in some circumstances separate extracurricular opportunities for students with disabilities may be appropriate and necessary. The guidance notes, for example, that a number of schools and districts have created wheelchair tennis and basketball leagues.

If you have any questions about the OCR guidance, please do not hesitate to contact Maree Sneed (maree.sneed@hoganlovells.com or 202-637-6416) or Chris Lott (Christopher.lott@hoganlovells.com or 202-637-5877).