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## Education Alert January 2013

### U.S. Department of Education Clarifies Students with Disabilities' Right to Access School Sports

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On January 25, 2013, the U.S. Department of Education's Office for Civil Rights ("OCR") issued a *Dear Colleague* Letter. It reiterated the existing legal obligation of school districts under Section 504 of the Rehabilitation Act of 1973 ("Section 504") -- students with disabilities must have an equal opportunity to participate in extracurricular school sports.

#### Eligibility Criteria for Extracurricular School Sports

OCR warns districts not to rely on generalizations when determining students' eligibility for school sports. Even if one student with a particular disability fails to qualify for a sports team, another student with the same disability may qualify. The district should make an individualized assessment.

Nevertheless, a school district may require a level of skill or ability that all students, including students with disabilities, must meet to participate in a particular sport. For example, a district could require all students to run the 400 meters by a certain time before they qualify for varsity track. If a student with a disability cannot meet that time, with reasonable modifications, he or she is not eligible for track.

#### Participation in Extracurricular School Sports

Coaches and other school personnel must apply the same criteria for all students when determining whether and how the student participates in the practice and the games. A district must provide reasonable modifications or aids and service to allow students with disabilities to participate unless it would be a fundamental alteration of the program.

A fundamental alteration is a modification or aid that changes an essential aspect of the game or creates an unfair advantage for the student with a disability. For example, it is a fundamental alteration to add extra bases so a student with a disability can participate on the baseball team. It is not a fundamental alteration to use a visual signal instead of a starting gun so a deaf student can compete on the track team.

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If a district has a legal obligation to provide an aid or service under the IDEA to enable students to participate in sports, it must also provide these accommodations to students with disabilities receiving services under Section 504. For example, if a Section 504 student requires glucose testing and insulin administration to play a sport, the district must provide it, since it is available under the IDEA.

**Massachusetts Interscholastic Athletic Association**

A school district's legal obligation to comply with Section 504 supersedes any rule of the Massachusetts Interscholastic Athletic Association ("MIAA"). A district must therefore ensure that the MIAA rules do not prevent a qualified student with a disability from participating in extracurricular sports.

**Separate Programs**

If students with disabilities cannot participate even with reasonable accommodations, the district should offer additional opportunities for these students such as wheelchair tennis or basketball. OCR does not specify how many separate programs a district should offer.

The districts should support these athletics programs "equal" to their other athletic programs. Again, OCR does not specify what "equal" means, whether it is relative to the same sport, such as comparing basketball to wheelchair basketball, to other sports in the same season or to all other sports in the school.

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