

Overview: Disability in Sport Dear Colleague Letter

Executive Summary

On January 24, 2013 the Office for Civil Rights issued a Dear Colleague Letter clarifying school's obligations under the Rehabilitation Act of 1973 to provide extracurricular athletic opportunities for students with disabilities. It creates a clear roadmap for how schools can integrate students with disabilities into mainstream athletic programs---and create adapted programs for students with disabilities.

The guidance is a landmark moment for individuals with disabilities, as it sends a loud message to educational institutions that students with disabilities must be provided opportunities for physical activity and sports equal to those afforded to students without disabilities.

Background

The Need

The benefits of athletic programs are equally important for students with disabilities as they are for students without disabilities. Sports are an effective intervention for addressing the obesity epidemic that is especially problematic for individuals with disabilities. Also, it has been show that individuals with disabilities who participate in sports have higher self-esteem, better body images and higher rates of academic success; are more confident and more likely to graduate from high school and matriculate in college; and experience greater career success and more options.

Despite these benefits, individuals with disabilities are not getting the same amount of physical activity and athletic opportunities as individuals without disabilities. In fact, studies indicate that 56% of people with disabilities do not engage in any physical activity, compared to 36% of people without disabilities, and only 23% of people with disabilities are active for 30 minutes three or more times per week. Additionally, there are 1.5 million first through twelfth graders with physical impairments that are not included in athletic competitions. Although individuals with disabilities have made significant gains since the passage of the Rehabilitation Act of 1973, students with disabilities are still facing pervasive inequities in physical activity programs and sports programs, particularly in our educational institutions. Comprehensive change is needed to address the systemic exclusion and discrimination students with disabilities face in terms of physical activity opportunities and resources for sports participation, and this guidance from the Department of Education is certainly a step in the right direction.

The Road to the Guidance

Both programmatic and policy level changes are needed to fully eliminate the disparities in access for individuals with disabilities to participate equally in physical activity and sport.

For nearly ten years, the Inclusive Fitness Coalition (IFC), led by its Policy Working Group Chair, Terri Lakowski, CEO of Active Policy Solutions, has been at the forefront of efforts to unite the disability in sport stakeholders in a broader advocacy movement to collectively advance the rights of individuals with disabilities in school – based sport and physical activity programs. The Inclusive Fitness Coalition is a national coalition of over 200 organizations dedicated to addressing the policy, environmental, and societal issues associated with the lack of inclusion and access to physical activity among people with disabilities.

During this time, working with key stakeholders and coalition partners, Active Policy Solutions with IFC coalition has:

- Passed the Fitness and Athletic Equity Act for Students with Disabilities in Maryland in 2008. This groundbreaking legislation clarifies for the first time the obligation of schools to provide sports and physical activity opportunities for students with disabilities.
- United over 200 organizations from the civil rights, sports, health and fitness, and education communities into a Policy Coalition for Student Athletes with Disabilities-under the umbrella of the Inclusive Fitness Coalition
- Marshaled the leadership of Sen. Tom Harkin (D-IA) and Reps. Chris Van Hollen (D-MD), Carolyn McCarthy (D-NY) and George Miller (D-CA) to commission a Government Accountability Office (GAO) study¹ in 2008 to examine the state of physical education and athletic opportunities for students with disabilities in secondary and post-secondary educational institutions. The findings of this study, released in June, 2010, *confirmed the need for continued action and advocacy on behalf of students with disabilities*. This included a call to the Department of Education to issue further guidance under the Rehab Act clarifying school's obligations to provide sports and physical activity opportunities for students with disabilities.

As a result of the recommendations of GAO Study, the Department of Education committed to provide resources to assist state and schools in serving students with disabilities in physical activity and sport settings and to produce guidance to clarifying schools' responsibilities under Section 504 of the Rehabilitation Act of 1973 to provide athletic opportunities for students with disabilities.

¹ <http://www.gao.gov/assets/310/305775.html>

The Guidance

Following the 2010 GAO report, the Department of Education began work on improving its guidance for the inclusion of students with disabilities into school athletics, resulting in the 2013 Dear Colleague Letter. The 2013 Dear Colleague Letter requires a holistic approach by schools seeking to comply with the Rehab Act and ensures that schools look broadly and proactively to include students with disabilities in athletic programs in order to satisfy their civil rights obligations to provide equal educational opportunities. The policies apply to **all levels of education** including both interscholastic and intercollegiate athletic opportunities.

Specifically, the guidance:

- Clarifies when and how schools must include students with disabilities in mainstream athletic programs
- Defines what true equal treatment of student athletes with disabilities means
- Encourages and provides a road map for schools to create adapted programs for students with disabilities

Key Policies

- **Creation of Grievance Procedures**
 - Schools must create grievance procedures to provide due process and the quick resolution of student's complaints under the Rehab Act.
- **Prohibition of Reliance on Stereotypes**
 - Schools cannot rely on generalizations of what students with disabilities are capable of to determine their participation in sports.
 - Coaches must use the same criteria for determining playing time of students with disabilities as for students without disabilities.
- **Provision of Equal Opportunity**
 - Following an individualized assessment, institutions must provide reasonable accommodations to provide students with disabilities equal opportunity to participate to the fullest extent possible in mainstream athletic programs.
 - A reasonable accommodation means that school systems must modify existing policies, practices or rules in order to include a student with a disability. A reasonable accommodation is one that does not fundamentally alter the nature of the services to provide the requested modification.
 - A fundamental alteration of a sport competition rule occurs where:
 - i. The requested modification alters an essential competition such that even if changed for everyone, it fundamentally changes the nature of the sport; or
 - ii. The requested modification, given the individual circumstances

of the person with a disability, provides the person with a disability a competitive advantage over competitors without disabilities.

- **Creation of Adapted Athletic Programs**
 - Schools should create adapted programs for students with disabilities who cannot participate in the mainstream athletic programs even with reasonable accommodations
 - These adapted programs must be provide the same support and resources as the school's mainstream athletic programs

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