

Before and After School Activities

What supports must a school provide?

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After-school clubs, sports teams, carnivals, dances, and other non-academic activities are often a fun reprieve for students. At the same time, these group activities can be important for social reasons, such as finding others with common interests, learning teamwork, practicing social skills and even other health benefits. But, students with disabilities who want to participate in after-school programs do not always have access to the activities, or more specifically, the support needed to participate. For a child with an Individualized Education Program (IEP), it is likely that the child will need similar supports for extracurricular activities as they do during the school day. Here's the rub: parents may have a difficult time getting schools to agree to provide these services outside of school hours.

Schools must provide a Free Appropriate Public Education (FAPE) to all students, and this includes nonacademic and extracurricular activities and services. But, what about students with IEPs or §504 Plans? Do those students have a right to participate in before and after school activities? What does the school have to do to help students participate? Does it matter if the activity is before school? After school? On the weekend? A football game? The answers to these questions depend on the type of activity and whether the activity is sponsored by the school.

Location versus Activity

For a school activity, such as a field trip or outdoor school, the district has the same responsibilities as it does when kids are at school. It doesn't matter if the activity takes place outside of school hours, over the weekend, or off-campus. The school must provide the services and aids needed for students with disabilities to participate. This could include a one-on-one aide, transportation, or specialized equipment, among other things.

School-sponsored activities can include after-school sports, clubs, and school dances and all students must have an equal opportunity to participate.

For non-school activities, such as Boy Scouts, the school doesn't have to provide services or support. While a school might allow private organizations to use school facilities, this does not make it a school event or activity and schools do not have to provide the supports for all to participate. If a school lets a Boy Scout troop use the gym after school or leases space for someone to provide before and after-school childcare, equal access within these activities is not a school issue. But, if a school gives significant help to one of these private companies, they may be on the hook for any discrimination that occurs.

Equal Opportunity Requirement

Special education law requires schools to allow students with disabilities equal opportunities to participate in nonacademic and extracurricular activities and services. All students must be allowed to participate as much as possible. This includes providing supplementary aids and services that are needed for a child to participate. Districts are not required to create separate or different activities for students with disabilities. Special education law says that this may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the school, referrals to agencies that provide assistance to individuals with disabilities, and employment of students (including both by the school and help making outside employment available). There is no limit on which activities can be included, nor must the activity be necessary for the education of the child for it to be covered under the Individuals with Disabilities Education Act (IDEA). Under Section 504, districts have similar obligations.

Schools cannot engage in assumptions, stereotypes, or prejudices, including generalizations about children with disabilities. Schools cannot limit participation based on characteristics associated with particular disabilities. For students with disabilities who cannot participate in athletic activities, even with reasonable aids and services or modifications of policies and procedures, schools are encouraged to provide other opportunities that are separate or different. Schools should be flexible and creative to provide activities that serve a wide range of students.

There are several ways schools can make activities accessible to students with disabilities. Specialized or modified equipment for various sports might be provided. Sports fields and gyms can be adapted to make them safer and accessible. Schools can

train teachers and coaches on how to provide support and how to adapt activities and games.

Limitations

Selective or Competitive Programs. Equal opportunity doesn't mean that every student has the right to play on the basketball team. Equal opportunity to participate is different than having the right to a spot on a team where students must try out. Schools can offer competitive programs that require a certain skill or ability to earn a spot on a team, applied equally to all students. If the selection or competition criteria is not discriminatory, any student can be "cut" for not meeting the level required.

Fundamental Alterations. Schools must offer opportunities to participate by providing reasonable modifications and aids necessary for a student to participate. The key word is "reasonable." While modifications may be needed for a student to participate, they must also be reasonable. If a modification causes a "fundamental alteration" of the activity, schools do not have to provide it. A fundamental alteration is something that changes an essential aspect of the game or activity, like changing the rules of the game – such as lowering the basket in a basketball game. Even though lowering the basket would benefit everyone, it still changes the game, which is not required. If a modification is refused because it fundamentally changes the activity, schools still must consider if other modifications could be made to allow the student to participate.

Other Eligibility Requirements. Schools can have age, attendance, and minimum grade requirements for activities. These eligibility requirements are allowed if applied the same way to all students. Courts have found exceptions where a student is found ineligible based on a failure of the school. For example, if a student is kicked off a sports team because her grades were too low, but the low GPA was because the school did not implement her IEP correctly, there may be a valid exception to the grade requirement. In this situation, the parents might consider a discrimination complaint against the school.

Extracurricular Activities and the IEP

If an IEP student needs support to participate during the school day, then support is likely needed for extracurricular activities. But, if a student has a one-on-one aide at school, that doesn't mean the school will provide an aide for every extracurricular activity. The IEP team should meet and decide what supplemental aids or services are needed for a student to participate in a particular extracurricular activity. The needed aids and services should be added to the student's IEP, including any transportation.

Practical Application

Activities before and after school are different than the regular school day, because there is usually less structure and supervision. Teaching rules and social nuances on a sports field are different than in a controlled environment, like a classroom. Coaches, referees, and parent volunteers may not have experience with special education students or IEPs and may not want or know how to use accommodations. If an IEP team

determines that supplementary aids or services are necessary, the IEP must be followed, and coaches and volunteers do not get to decide what will be allowed for a student.

It can be difficult to get a school to provide services for before and after school activities. Schools don't want to provide additional staff, especially outside of contract hours.

For children with high needs, it is common for schools to tell parents their child cannot attend unless the parent is also there. Schools are not allowed to do this. There is no requirement that a parent must attend an activity with their child, and the school cannot prevent the child from attending for that reason. If the child needs an adult aide to attend an event, it is the obligation of the school to provide one, not the parent.

What Should You Do?

Ask the school to find ways for your child to participate. Even if a child doesn't make a sports team, there might be other ways to participate in practice or have a different role on the team. If you feel your child is being left out of activities or the school is telling you that your child isn't allowed to attend an event, you should request a meeting with the school. You shouldn't have to have an IEP meeting to discuss every activity, but if there is an unresolved issue, you should request an IEP meeting.

Parents should encourage every child to participate in whatever extracurricular activities are of interest. These experiences can be an integral part of all students' learning and development. Parents may need to advocate for their children in order to have an equal opportunity to participate. This advocacy can result in great benefits, not only to the student with a disability, but to other students as well. Inclusion benefits everyone and is worth fighting for. Don't let the school tell you their obligation is over when the school day ends.



Diane Wiscarson and Kelsey Coulter are attorneys with Wiscarson Law, the only firm in Oregon with a primary emphasis on special education law for families. Since its founding in 2001, Wiscarson Law has shepherded thousands of Oregon and Washington families through the region's public schools and education service districts on behalf of their special needs children.