STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
MARGARET M. O'NEILL BUILDING
410 FEDERAL STREET, SUITE 1
DOVER, DE 19901

VOICE: (302) 739-3620
TTY/TDD: (302) 739-3699
FAX: (302) 739-6704

August 26, 2015

Ms. Tina Shockley, Education Associate
Department of Education
401 Federal Street, Suite 2
Dover, DE 19901

RE: 19 DE Reg. 111 [DOE Proposed High School Interscholastic Athletics Regulation]

Dear Ms. Shockley:

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Education's (DOE's) proposal to adopt revisions to the Delaware Interscholastic Athletic Association (DIAA) regulation covering school-sponsored sport and athletic activities at the high school level. The proposed regulation was published as 19 DE Reg. 111 in the August, 2015 issue of the Register of Regulations. SCPD has the following observations.

First, §§7.1.2.2 and 7.2.1.2 are amended to require certified and emergency coaches to complete an approved concussion course. This furthers the concussion and return-to-play initiatives of the SCPD and AI duPont. It also implements 14 Del.C. §303(d) adopted in 2011.

Second, §2.1.1 is difficult to interpret. It recites that a student turning 19 on or after June 15 immediately preceding the student's year of participation shall be eligible for all sports provided all other eligibility requirements are met. There is no definition of "student's year of participation". Moreover, there is no comparable guidance for a student who becomes age 20 or 21 on or after June 15. Students are generally eligible to attend school at least through age 20. See 14 Del.C. §202(a). An IDEA-classified student is often eligible for education past his/her 21st birthday. See 14 Del.C. §3101(1). The implication of §2.1.1 is that 19 year olds can play all sports but 20 year olds are barred from all sports. If this is accurate, it reflects a rather "brittle" approach to eligibility which deters participation in athletics.

Third, §2.1.1.2 is an attempt to create an age waiver protocol for students with disabilities. While well-intentioned, it merits reconsideration in several contexts.

A. Section 2.1.1.2.2.3 limits the waiver to IDEA-classified students with an IEP. At a minimum, §504-identified students with disabilities are eligible for policy modifications and accommodations under federal law. See attached U.S. Department of Education guidance documents. See also the discussion under "Fourth" below.

B. An IDEA-identified student is entitled to have extracurricular and nonacademic activities (including athletics) included in the student's IEP. See attached 2011 guidance at p. 10 and 34 C.F.R. §§300.107 and §300.320(a)(4). Cf. 19 DE Reg. 107, §1.2.1.5.4.3 ["Remember the field, court, pool or mat is a

classroom."] The athletic activity is therefore subject to IEP team jurisdiction. The IEP team would determine whether an accommodation or policy modification is appropriate to enable a student to participate in a DIAA-sponsored activity. The proposed DIAA regulation incorporates standards which would be considered "foreign" to IEP team deliberation, including placing the burden of proof to qualify for an accommodation on the student and reciting that DOE staff and representatives have no duty to produce or collect information (§2.1.1.2.1) .

C. Section 2.1.1.2.1 categorically bars an age waiver "for any season or sport in any subsequent school year". This rigid approach is "at odds" with individualized decision-making required by the IDEA and Section 504. It is reminiscent of a past attempt to limit IDEA-student driver education eligibility to the standard 1-time enrollment. Title 14 Del.C. §4125 was amended in 2012 to permit subsequent enrollment in deference to federal law. If an IEP team determines that a student should participate in an athletic activity for 2 years in a row, the team's decision-making cannot be hamstrung by a no-exceptions DOE regulation.

D. Section 2.1.1.2.2.1 limits the disability determination to a "treating physician or psychiatrist." This is unduly narrow. Compare §3.1.1, §3.1.6.2, and 14 DE Admin Code 930.2.2.

E. The combination of §2.1.1.2.2.2 and §2.1.1.2.2.4 indicates that an age waiver would only be granted if a student with a disability has weak or depressed skills. Query why having weak skills is material? If a student with autism or Downs Syndrome is a fast runner, why should his/her speed be a factor in denying a waiver? The DIAA "Sportsmanship" regulation stresses that developing character is the focus of interscholastic sports, not "winning". See 19 DE Reg 106, §1.2.1.5.2.2.

Fourth, several sections (e.g. §§2.1.1.2, 2.3.3.2) use the term "student with a disability" which is limited to IDEA-classified students to the exclusion of students identified under Section 504. See §2.3.3.1, definition of "student with a disability". Consistent with the attached 2013 federal guidance, footnote 8, Section 504-identified students are entitled to similar protections and accommodations. The DOE has provided assurances that it does not discriminate based on "disability", not simply IDEA-identified disability. See 14 DE Admin Code 225.1.0.

Fifth, §2.3.3.2 provides as follows:

> 2.3.3.2. A student with a disability who is placed in a special school or program shall be eligible to participate in interscholastic athletics as follows:
>
> > 2.3.3.2.1. If the special school or program sponsors the interscholastic sport in question, the student shall be eligible to participate only at the school or program.

This violates federal and State law since it categorically bars a student with a disability from any opportunity to participate in a non-segregated team. It rigidly limits a student with a disability to participate in a team exclusively comprised of students with disabilities of the special school (e.g. Sterck). The DOE has an affirmative obligation to promote opportunities for participation in integrated extracurricular activities. See 14 DE Admin Code 923.17.0; 34 C.F.R. §§104.34(b) and 104.37(c)(2); and 34 C.F.R. §300.117.

Sixth, §2.6.1.1 authorizes an accommodation for a student with a disability with an IEP but not a student with a disability with a Section 504 Plan. The section should be modified to also cover students with a Section 504 Plan. See discussion in "Fourth" above.

Seventh, §2.7 bars a student from participating in athletics after 4 consecutive years from the date of the student's first entrance into the 9th grade. It also bars a student who had more than 4 "opportunities" to participate in sports. The regulation authorizes the DIAA to issue a "hardship" waiver. The standards place the "burden of proof" on the student and the DIAA considers disability-related factors such as extended illness, debilitating injury, and emotional stress. For a student with a disability, the decision of whether a student should participate in extracurricular activities such as athletics is the province of the IEP or Section 504 team. Such decision-making does not involve a "burden of proof". The team would decide if such participation is appropriate as part of a FAPE.

Eighth, §6.6 discourages participation of students with disabilities in programs such as Special Olympics. The regulation bans a school (e.g. Ennis; Leach) from transporting students to Special Olympics, bans PTAs and support groups from providing or paying for transportation to Special Olympics, and limits school-supplied assistive technology/equipment to that used to prevent physical injury. Thus, if a student has a school-supplied AAC device for communication in the community, the student cannot use it to communicate at a Special Olympics event. These limits are "overbroad" and ill-conceived since the DOE should be encouraging, not discouraging, participation in such extracurricular activities.

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our observations on the proposed regulation.

Sincerely,

Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

cc: The Honorable Mark Murphy, Secretary of Education
The Honorable Melanie Smith
The Honorable Michael Ramone
The Honorable Margaret Rose Henry
The Honorable Gregory Lavelle
The Honorable Bryan Townsend
Ms. Ann Grunert, Special Olympics
Ms. Terri Hodges, State PTA
Mr. Tony Glenn, DFRC
Mr. Chris Kenton, Professional Standards Board
Dr. Teri Quinn Gray, State Board of Education
Ms. Mary Ann Mieczkowski, Department of Education
Ms. Kathleen Geiszler, Esq., Department of Justice
Ms. Terry Hickey, Esq., Department of Justice
Ms. Ilona Kirshon, Esq., Department of Justice
Mr. Brian Hartman, Esq.
Developmental Disabilities Council
Governor's Advisory Council for Exceptional Citizens

19reg111 doe-high school interscholastic athletics 8-26-15

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

January 25, 2013

Dear Colleague:

Extracurricular athletics—which include club, intramural, or interscholastic (*e.g.*, freshman, junior varsity, varsity) athletics at all education levels—are an important component of an overall education program. The United States Government Accountability Office (GAO) published a report that underscored that access to, and participation in, extracurricular athletic opportunities provide important health and social benefits to all students, particularly those with disabilities.[1] These benefits can include socialization, improved teamwork and leadership skills, and fitness. Unfortunately, the GAO found that students with disabilities are not being afforded an equal opportunity to participate in extracurricular athletics in public elementary and secondary schools.[2]

To ensure that students with disabilities consistently have opportunities to participate in extracurricular athletics equal to those of other students, the GAO recommended that the United States Department of Education (Department) clarify and communicate schools' responsibilities under Section 504 of the Rehabilitation Act of 1973 (Section 504) regarding the provision of extracurricular athletics. The Department's Office for Civil Rights (OCR) is responsible for enforcing Section 504, which is a Federal law

[1] United States Government Accountability Office, *Students with Disabilities: More Information and Guidance Could Improve Opportunities in Physical Education and Athletics*, No. GAO-10-519, at 1, 31 (June 2010), *available at* http://www.gao.gov/assets/310/305770.pdf.

[2] *Id.* at 20-22, 25-26.

designed to protect the rights of individuals with disabilities in programs and activities (including traditional public schools and charter schools) that receive Federal financial assistance.[3]

In response to the GAO's recommendation, this guidance provides an overview of the obligations of public elementary and secondary schools under Section 504 and the Department's Section 504 regulations, cautions against making decisions based on presumptions and stereotypes, details the specific Section 504 regulations that require students with disabilities to have an equal opportunity for participation in nonacademic and extracurricular services and activities, and discusses the provision of separate or different athletic opportunities. The specific details of the illustrative examples offered in this guidance are focused on the elementary and secondary school context. Nonetheless, students with disabilities at the postsecondary level must also be provided an equal opportunity to participate in athletics, including intercollegiate, club, and intramural athletics.[4]

[3] 29 U.S.C. § 794(a), (b). Pursuant to a delegation by the Attorney General of the United States, OCR shares in the enforcement of Title II of the Americans with Disabilities Act of 1990, which is a Federal law prohibiting disability discrimination in the services, programs, and activities of state and local governments (including public school districts), regardless of whether they receive Federal financial assistance. 42 U.S.C. § 12132. Violations of Section 504 that result from school districts' failure to meet the obligations identified in this letter also constitute violations of Title II. 42 U.S.C. § 12201(a). To the extent that Title II provides greater protection than Section 504, covered entities must comply with Title II's substantive requirements.

OCR also enforces Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in education programs that receive Federal financial assistance. 20 U.S.C. § 1681. For more information about the application of Title IX in athletics, see OCR's "Reading Room," "Documents – Title IX," at http://www.ed.gov/ocr/publications.html#TitleIX-Docs.

[4] 34 C.F.R. §§ 104.4, 104.47. The U.S. Department of Education has determined that this document is a "significant guidance document" under the Office of Management and Budget's Final Bulletin for Agency Good Guidance Practices, 72 Fed. Reg. 3432 (Jan. 25, 2007). OCR issues this and other policy guidance to provide recipients with information to assist them in meeting their obligations, and to provide members of the public with information about their rights under the civil rights laws and implementing regulations that we enforce. OCR's legal authority is based on those laws and regulations. This letter does not add requirements to applicable law, but provides information and examples to inform recipients about how OCR evaluates whether covered entities are complying with their legal obligations. If you are interested in commenting on this guidance, please send an e-mail with your comments to OCR@ed.gov, or write to us at the following address: Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, DC 20202.

I. *Overview of Section 504 Requirements*

To better understand the obligations of school districts with respect to extracurricular athletics for students with disabilities, it is helpful to review Section 504's requirements.

Under the Department's Section 504 regulations, a school district is required to provide a qualified student with a disability an opportunity to benefit from the school district's program equal to that of students without disabilities. For purposes of Section 504, a person with a disability is one who (1) has a physical or mental impairment that substantially limits one or more major life activities; (2) has a record of such an impairment; or (3) is regarded as having such an impairment.[5] With respect to public elementary and secondary educational services, "qualified" means a person (i) of an age during which persons without disabilities are provided such services, (ii) of any age during which it is mandatory under state law to provide such services to persons with disabilities, or (iii) to whom a state is required to provide a free appropriate public education under the Individuals with Disabilities Education Act (IDEA).[6]

Of course, simply because a student is a "qualified" student with a disability does not mean that the student must be allowed to participate in any selective or competitive program offered by a school district; school districts may require a level of skill or ability of a student in order for that student to participate in a selective or competitive program or activity, so long as the selection or competition criteria are not discriminatory.

Among other things, the Department's Section 504 regulations prohibit school districts from:

- denying a qualified student with a disability the opportunity to participate in or benefit from an aid, benefit, or service;
- affording a qualified student with a disability an opportunity to participate in or benefit from an aid, benefit, or service that is not equal to that afforded others;

---

[5] 29 U.S.C. § 705(9)(B), (20)(B) (as amended by the Americans with Disabilities Act Amendments Act of 2008); 34 C.F.R. § 104.3(j). For additional information on the broadened meaning of disability after the effective date of the 2008 Amendments Act, see OCR's 2012 Dear Colleague Letter and Frequently Asked Questions document, available at http://www.ed.gov/ocr/letters/colleague-201109.html, and http://www.ed.gov/ocr/docs/dcl-504faq-201109.html.

[6] 34 C.F.R. § 104.3(*l*)(2).

- providing a qualified student with a disability with an aid, benefit, or service that is not as effective as that provided to others and does not afford that student with an equal opportunity to obtain the same result, gain the same benefit, or reach the same level of achievement in the most integrated setting appropriate to the student's needs;

- providing different or separate aid, benefits, or services to students with disabilities or to any class of students with disabilities unless such action is necessary to provide a qualified student with a disability with aid, benefits, or services that are as effective as those provided to others; and

- otherwise limiting a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.[7]

The Department's Section 504 regulations also require school districts to provide a free appropriate public education (Section 504 FAPE) to each qualified person with a disability who is in the school district's jurisdiction, regardless of the nature or severity of the person's disability.[8]

---

[7] 34 C.F.R. § 104.4(b)(1)(i)-(iv), (vii), (2), (3). Among the many specific applications of these general requirements, Section 504 prohibits harassment on the basis of disability, including harassment that occurs during extracurricular athletic activities. OCR issued a Dear Colleague letter dated October 26, 2010, that addresses harassment, including disability harassment, in educational settings. *See* Dear Colleague Letter: Harassment and Bullying, available at http://www.ed.gov/ocr/letters/colleague-201010.html. For additional information on disability-based harassment, see OCR's Dear Colleague Letter: Prohibited Disability Harassment (July 25, 2000), available at http://www.ed.gov/ocr/docs/disabharassltr.html.

[8] 34 C.F.R. § 104.33(a). Section 504 FAPE may include services a student requires in order to ensure that he or she has an equal opportunity to participate in extracurricular and other nonacademic activities. One way to meet the Section 504 FAPE obligation is to implement an individualized education program (IEP) developed in accordance with the IDEA. 34 C.F.R. § 104.33(b)(2). Because the IDEA is not enforced by OCR, this document is not intended as an explanation of IDEA requirements or implementing regulations, which include the requirement that a student's IEP address the special education, related services, supplementary aids and services, program modifications, and supports for school personnel to be provided to enable the student to, among other things, participate in extracurricular and other nonacademic activities. 34 C.F.R. § 300.320(a)(4)(ii). In general, OCR would view a school district's failure to address participation or requests for participation in extracurricular athletics for a qualified student with a disability with an IEP in a manner consistent with IDEA requirements as a failure to ensure Section 504 FAPE and an equal opportunity for participation.

A school district must also adopt grievance procedures that incorporate appropriate due process standards and that provide for prompt and equitable resolution of complaints alleging violations of the Section 504 regulations.[9]

A school district's legal obligation to comply with Section 504 and the Department's regulations supersedes any rule of any association, organization, club, or league that would render a student ineligible to participate, or limit the eligibility of a student to participate, in any aid, benefit, or service on the basis of disability.[10] Indeed, it would violate a school district's obligations under Section 504 to provide significant assistance to any association, organization, club, league, or other third party that discriminates on the basis of disability in providing any aid, benefit, or service to the school district's students.[11] To avoid violating their Section 504 obligations in the context of extracurricular athletics, school districts should work with their athletic associations to ensure that students with disabilities are not denied an equal opportunity to participate in interscholastic athletics.[12]

II. *Do Not Act On Generalizations and Stereotypes*

A school district may not operate its program or activity on the basis of generalizations, assumptions, prejudices, or stereotypes about disability generally, or specific disabilities in particular. A school district also may not rely on generalizations about what students with a type of disability are capable of—one student with a certain type of disability may not be able to play a certain type of sport, but another student with the same disability may be able to play that sport.

Example 1: A student has a learning disability and is a person with a disability as defined by Section 504. While in middle school, this student enjoyed participating in her school's lacrosse club. As she enters the ninth grade in high school, she tries out and is

---

[9] 34 C.F.R. § 104.7(b).

[10] 34 C.F.R. § 104.10(a), 34 C.F.R. § 104.4(b)(1).

[11] 34 C.F.R. § 104.4(b)(1)(v); 34 C.F.R. pt. 104, App. A § 104.4 at 367 (2012).

[12] OCR would find that an interscholastic athletic association is subject to Section 504 if it receives Federal financial assistance or its members are recipients of Federal financial assistance who have ceded to the association controlling authority over portions of their athletic program. *Cf. Cmtys. for Equity v. Mich. High Sch. Athletic Ass'n, Inc.*, 80 F.Supp.2d 729, 733-35 (W.D. Mich. 2000) (at urging of the United States, court finding that an entity with controlling authority over a program or activity receiving Federal financial assistance is subject to Title IX's anti-discrimination rule). Where an athletic association is covered by Section 504, OCR would find that the school district's obligations set out in this letter would apply with equal force to the covered athletic association.

selected as a member of the high school's lacrosse team. The coach is aware of this student's learning disability and believes that all students with the student's particular learning disability would be unable to play successfully under the time constraints and pressures of an actual game. Based on this assumption, the coach decides never to play this student during games. In his opinion, participating fully in all the team practice sessions is good enough.

> *Analysis*: OCR would find that the coach's decision violates Section 504. The coach denied this student an equal opportunity to participate on the team by relying solely on characteristics he believed to be associated with her disability. A school district, including its athletic staff, must not operate on generalizations or assumptions about disability or how a particular disability limits any particular student. Rather, the coach should have permitted this student an equal opportunity to participate in this athletic activity, which includes the opportunity to participate in the games as well as the practices. The student, of course, does not have a right to participate in the games; but the coach's decision on whether the student gets to participate in games must be based on the same criteria the coach uses for all other players (such as performance reflected during practice sessions).

III. *Ensure Equal Opportunity for Participation*

A school district that offers extracurricular athletics must do so in such manner as is necessary to afford qualified students with disabilities an equal opportunity for participation.[13] This means making reasonable modifications and providing those aids and services that are necessary to ensure an equal opportunity to participate, unless the school district can show that doing so would be a fundamental alteration to its program.[14] Of course, a school district may adopt bona fide safety standards needed to implement its extracurricular athletic program or activity. A school district, however, must consider whether safe participation by any particular student with a disability can be assured through reasonable modifications or the provision of aids and services.[15]

---

[13] 34 C.F.R. § 104.37(a), (c).

[14] *See Alexander v. Choate*, 469 U.S. 287, 300-01 (1985) (Section 504 may require reasonable modifications to a program or benefit to assure meaningful access to qualified persons with disabilities); *Southeastern Cmty. Coll. v. Davis*, 442 U.S. 397 (1979) (Section 504 does not prohibit a college from excluding a person with a serious hearing impairment as not qualified where accommodating the impairment would require a fundamental alteration in the college's program).

[15] 34 C.F.R. § 104.4(b)(1).

Schools may require a level of skill or ability for participation in a competitive program or activity; equal opportunity does not mean, for example, that every student with a disability is guaranteed a spot on an athletic team for which other students must try out. A school district must, however, afford qualified students with disabilities an equal opportunity for participation in extracurricular athletics in an integrated manner to the maximum extent appropriate to the needs of the student.[16] This means that a school district must make reasonable modifications to its policies, practices, or procedures whenever such modifications are necessary to ensure equal opportunity, unless the school district can demonstrate that the requested modification would constitute a fundamental alteration of the nature of the extracurricular athletic activity.

In considering whether a reasonable modification is legally required, the school district must first engage in an individualized inquiry to determine whether the modification is necessary. If the modification is necessary, the school district must allow it unless doing so would result in a fundamental alteration of the nature of the extracurricular athletic activity. A modification might constitute a fundamental alteration if it alters such an essential aspect of the activity or game that it would be unacceptable even if it affected all competitors equally (such as adding an extra base in baseball). Alternatively, a change that has only a peripheral impact on the activity or game itself might nevertheless give a particular player with a disability an unfair advantage over others and, for that reason, fundamentally alter the character of the competition. Even if a specific modification would constitute a fundamental alteration, the school district would still be required to determine if other modifications might be available that would permit the student's participation.

[16] 34 C.F.R. § 104.37(a), (c); 34 C.F.R. § 104.34(b); 34 C.F.R. § 104.4(b)(1)(ii).

To comply with its obligations under Section 504, a school district must also provide a qualified student with a disability with needed aids and services, if the failure to do so would deny that student an equal opportunity for participation in extracurricular activities in an integrated manner to the maximum extent appropriate to the needs of the student.[17]

Example 2: A high school student has a disability as defined by Section 504 due to a hearing impairment. The student is interested in running track for the school team. He is especially interested in the sprinting events such as the 100 and 200 meter dashes. At the tryouts for the track team, the start of each race was signaled by the coach's assistant using a visual cue, and the student's speed was fast enough to qualify him for the team in those events. After the student makes the team, the coach also signals the start of races during practice with the same visual cue. Before the first scheduled meet, the student asks the district that a visual cue be used at the meet simultaneously when the starter pistol sounds to alert him to the start of the race. Two neighboring districts use a visual cue as an alternative start in their track and field meets. Those districts report that their runners easily adjusted to the visual cue and did not complain about being distracted by the use of the visual cue.

After conducting an individualized inquiry and determining that the modification is necessary for the student to compete at meets, the district nevertheless refuses the student's request because the district is concerned that the use of a visual cue may distract other runners and trigger complaints once the track season begins. The coach tells the student that although he may practice with the team, he will not be allowed to participate in meets.

---

[17] 34 C.F.R. § 104.37(a), (c); 34 C.F.R. § 104.34(b); 34 C.F.R. § 104.4(b)(1)(ii). Although a school district may also raise the defense that a needed modification or aid or service would constitute an undue burden to its program, based on OCR's experience, such a defense would rarely, if ever, prevail in the context of extracurricular athletics; for this reason, to the extent the examples in this letter touch on applicable defenses, the discussion focuses on the fundamental alteration defense. To be clear, however, neither the fundamental alteration nor undue burden defense is available in the context of a school district's obligation to provide a FAPE under the IDEA or Section 504. *See* 20 U.S.C. § 1414(d)(1); 34 C.F.R. § 104.33. Moreover, whenever the IDEA would impose a duty to provide aids and services needed for participation in extracurricular athletics (as discussed in footnote 8 above), OCR would likewise rarely, if ever, find that providing the same needed aids and services for extracurricular athletics constitutes a fundamental alteration under Section 504 for students not eligible under the IDEA.

Analysis: OCR would find that the school district's decision violates Section 504.

While a school district is entitled to set its requirements as to skill, ability, and other benchmarks, it must provide a reasonable modification if necessary, unless doing so would fundamentally alter the nature of the activity. Here, the student met the benchmark requirements as to speed and skill in the 100 and 200 meter dashes to make the team. Once the school district determined that the requested modification was necessary, the school district was then obligated to provide the visual cue unless it determined that providing it would constitute a fundamental alteration of the activity.

In this example, OCR would find that the evidence demonstrated that the use of a visual cue does not alter an essential aspect of the activity or give this student an unfair advantage over others. The school district should have permitted the use of a visual cue and allowed the student to compete.

Example 3: A high school student was born with only one hand and is a student with a disability as defined by Section 504. This student would like to participate on the school's swim team. The requirements for joining the swim team include having a certain level of swimming ability and being able to compete at meets. The student has the required swimming ability and wishes to compete. She asks the school district to waive the "two-hand touch" finish it requires of all swimmers in swim meets, and to permit her to finish with a "one-hand touch." The school district refuses the request because it determines that permitting the student to finish with a "one-hand touch" would give the student an unfair advantage over the other swimmers.

Analysis: A school district must conduct an individualized assessment to determine whether the requested modification is necessary for the student's participation, and must determine whether permitting it would fundamentally alter the nature of the activity. Here, modification of the two-hand touch is necessary for the student to participate. In determining whether making the necessary modification – eliminating the two-hand touch rule – would fundamentally alter the nature of the swim competition, the school district must evaluate whether the requested modification alters an essential aspect of the activity or would give this student an unfair advantage over other swimmers.

OCR would find a one-hand touch does not alter an essential aspect of the activity. If, however, the evidence demonstrated that the school district's judgment was correct that she would gain an unfair advantage over others who are judged on the touching of both hands, then a complete waiver of the rule would constitute a fundamental alteration and not be required.

In such circumstances, the school district would still be required to determine if other modifications were available that would permit her participation. In this situation, for example, the school district might determine that it would not constitute an unfair advantage over other swimmers to judge the student to have finished when she touched the wall with one hand and her other arm was simultaneously stretched forward. If so, the school district should have permitted this modification of this rule and allowed the student to compete.

Example 4: An elementary school student with diabetes is determined not eligible for services under the IDEA. Under the school district's Section 504 procedures, however, he is determined to have a disability. In order to participate in the regular classroom setting, the student is provided services under Section 504 that include assistance with glucose testing and insulin administration from trained school personnel. Later in the year, this student wants to join the school-sponsored gymnastics club that meets after school. The only eligibility requirement is that all gymnastics club members must attend that school. When the parent asks the school to provide the glucose testing and insulin administration that the student needs to participate in the gymnastics club, school personnel agree that it is necessary but respond that they are not required to provide him with such assistance because gymnastics club is an extracurricular activity.

Analysis: OCR would find that the school's decision violates Section 504. The student needs assistance in glucose testing and insulin administration in order to participate *in* activities during and after school. To meet the requirements of Section 504 FAPE, the school district must provide this needed assistance during the school day.

In addition, the school district must provide this assistance after school under Section 504 so that the student can participate in the gymnastics club, unless doing so would be a fundamental alteration of the district's education program. Because the school district always has a legal obligation under IDEA to provide aids or services in its education program to enable any IDEA-eligible students to participate in extracurricular

activities,[18] providing these aids or services after school to a student with a disability not eligible under the IDEA would rarely, if ever, be a fundamental alteration of its education program. This remains true even if there are currently no IDEA-eligible students in the district who need these aids or services.

In this example, OCR would find that the school district must provide glucose testing and insulin administration for this student during the gymnastics club in order to comply with its Section 504 obligations. The student needs this assistance in order to participate in the gymnastics club, and because this assistance is available under the IDEA for extracurricular activities, providing this assistance to this student would not constitute a fundamental alteration of the district's education program.[19]

IV. *Offering Separate or Different Athletic Opportunities*

As stated above, in providing or arranging for the provision of extracurricular athletics, a school district must ensure that a student with a disability participates with students without disabilities to the maximum extent appropriate to the needs of that student with a disability.[20] The provision of *unnecessarily* separate or different services is discriminatory.[21] OCR thus encourages school districts to work with their community and athletic associations to develop broad opportunities to include students with disabilities in all extracurricular athletic activities.

Students with disabilities who cannot participate in the school district's existing extracurricular athletics program – even with reasonable modifications or aids and services – should *still* have an equal opportunity to receive the benefits of extracurricular athletics. When the interests and abilities of some students with disabilities cannot be as fully and effectively met by the school district's existing extracurricular athletic program, the school district should create additional opportunities for those students with disabilities.

---

[18] 20 U.S.C. §§ 1412(a)(1), 1414(d)(1)(A)(i)(IV)(bb); 34 CFR §§ 300.320(a)(4)(ii), 300.107, 300.117; *see also* footnotes 8 & 17, above.

[19] 34 C.F.R. § 104.37.

[20] 34 C.F.R. § 104.34(b).

[21] 34 C.F.R. pt. 104, App. A § 104.4 at 367 (2012); 34 C.F.R. pt. 104, App. A § 104.37 at 376 (2012).

In those circumstances, a school district should offer students with disabilities opportunities for athletic activities that are separate or different from those offered to students without disabilities. These athletic opportunities provided by school districts should be supported equally, as with a school district's other athletic activities. School districts must be flexible as they develop programs that consider the unmet interests of students with disabilities. For example, an ever-increasing number of school districts across the country are creating disability-specific teams for sports such as wheelchair tennis or wheelchair basketball. When the number of students with disabilities at an individual school is insufficient to field a team, school districts can also: (1) develop district-wide or regional teams for students with disabilities as opposed to a school-based team in order to provide competitive experiences; (2) mix male and female students with disabilities on teams together; or (3) offer "allied" or "unified" sports teams on which students with disabilities participate with students without disabilities.[22] OCR urges school districts, in coordination with students, families, community and advocacy organizations, athletic associations, and other interested parties, to support these and other creative ways to expand such opportunities for students with disabilities.[23]

V. ***Conclusion***

OCR is committed to working with schools, students, families, community and advocacy organizations, athletic associations, and other interested parties to ensure that students with disabilities are provided an equal opportunity to participate in extracurricular athletics. Individuals who believe they have been subjected to discrimination may also file a complaint with OCR or in court.[24]

---

[22] The Department's Office of Special Education and Rehabilitative Services issued a guidance document that, among other things, includes suggestions on ways to increase opportunities for children with disabilities to participate in physical education and athletic activities. That guidance, *Creating Equal Opportunities for Children and Youth with Disabilities to Participate in Physical Education and Extracurricular Athletics*, dated August 2011, is available at http://www2.ed.gov/policy/speced/guid/idea/equal-pe.pdf.

[23] It bears repeating, however, that a qualified student with a disability who would be able to participate in the school district's existing extracurricular athletics program, with or without reasonable modifications or the provision of aids and services that would not fundamentally alter the program, may neither be denied that opportunity nor be limited to opportunities to participate in athletic activities that are separate or different. 34 C.F.R. § 104.37(c)(2).

[24] 34 C.F.R. § 104.61 (incorporating 34 C.F.R. § 100.7(b)); *Barnes v. Gorman*, 536 U.S. 181, 185 (2002).

For the OCR regional office serving your area, please visit: http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm, or call OCR's Customer Service Team at 1-800-421-3481 (TDD 1-877-521-2172).

Please do not hesitate to contact us if we can provide assistance in your efforts to address this issue or if you have other civil rights concerns. I look forward to continuing our work together to ensure that students with disabilities receive an equal opportunity to participate in a school district's education program.

Sincerely,

/s/

Seth M. Galanter
Acting Assistant Secretary for Civil Rights

Creating Equal Opportunities for Children and Youth with Disabilities to Participate in Physical Education and Extracurricular Athletics

August, 2011

The U.S. Department of Education does not mandate or prescribe particular curricula or teaching strategies. The resources, information, and links cited in this document are for the readers' convenience and their inclusion herein does not constitute an endorsement by the U.S. Department of Education of any products or services cited in this document.

U.S, Department of Education
Arne Duncan
Secretary

Office of Special Education and Rehabilitative Services (OSERS)
Alexa Posny
Assistant Secretary

Office of Special Education Programs
Melody Musgrove
Director

August 2011

This report is in the public domain. Authorization to reproduce it in whole or in part is granted. All Web sites were accessed in August 2011. While permission to reprint this publication is not necessary, the citation should be: U.S. Department of Education, Office of Special Education and Rehabilitative Services, Office of Special Education Programs, *Creating Equal Opportunities for Children and Youth with Disabilities to Participate in Physical Education and Extracurricular Athletics*, Washington, D.C., 2011.

CONTENTS

Overview 1

Federal Laws 2

Guidelines for Physical Activity 4

Limitations in Our Current Knowledge 5

Suggestions to Increase Opportunities 7

Accessibility 7

Equipment 8

Personnel preparation 8

Teaching style 9

Management of behavior 9

Program options 10

Curriculum 11

Assessment, Progress, Achievement, and Grading 12

Conclusion 14

Appendix A: References 15

Appendix B: An Example from State Legislation and Policy: Maryland 17

Appendix C: Resources 18

National Center on Accessibility 18

National Center on Physical Activity and Disability 18

National Consortium for Physical Education and Recreation for Individuals with Disabilities 18

The President's Challenge 18

Project UNIFY 18

Adapted Physical Education Personnel Preparation Projects funded by the U.S. Department of Education, Office of Special Education Programs 19

OVERVIEW

Physical inactivity is high among many children. In 2009, less than 25% of youth participated in at least 60 minutes of physical activity on any of the previous seven days according to the national Youth Risk Behavior Survey (U. S. Department of Health and Human Services, 2010). The President's Council on Physical Fitness and Sports Research Digest reported that physical activity is 4.5 times lower for children and youth with disabilities than their peers without disabilities (Rimmer, 2008). The patterns of inactivity in childhood and adolescence track to higher rates of inactivity, obesity, and other health problems in adulthood. Among some young people with disabilities, the lower rates of physical activity may be related to the lack of physical capacity to perform certain activities and the lack of appropriate opportunities for physical activity and athletics.

Adults with disabilities report the barriers to health and fitness "include cost of memberships, lack of transportation to fitness centers, lack of information on available and accessible facilities and programs, lack of accessible exercise equipment that can be purchased for home use, and the perception that fitness facilities are unfriendly environments for those with a disability" (Rimmer, 2008, p. 3). The feelings related to lack of access and being unwelcomed reflect a continuation of behavioral and emotional patterns begun in childhood. Typically, children and youth with disabilities engage in very little school-based physical activity, less healthy after-school activity, and more sedentary amusements (Rimmer & Rowland, 2007).

A report by the United States Government Accountability Office (GAO-10-519) revealed that, despite legislation obligating states and schools to provide equal access, opportunities for physical activity are limited for children and youth with disabilities (GAO, 2010). This

document is the initial response to the GAO recommendation that "the Secretary of Education facilitate information sharing among states and schools on ways to provide opportunities in [physical education] PE and extracurricular athletics to students with disabilities" (p. 32). The purposes of this document are to disseminate information on improving opportunities for children and youth to access PE and athletics and to refer the reader to sources of additional information regarding the inclusion of children and youth with disabilities in PE and athletic extracurricular activities. The Office for Civil Rights (OCR) in the U.S. Department of Education (Department) is providing separate and additional guidance on the legal aspects of the provision of extracurricular athletic opportunities to students with disabilities to comply with the second recommendation by the GAO to the Department in its report.

This document includes an overview of the problem, suggestions to increase opportunities for children and youth to access PE and athletics, and three appendices. Appendix A includes references from the field, Appendix B includes an example of a State law that addresses equal opportunity to access PE and athletics, and Appendix C lists projects and collaborative efforts that address physical activity among people with disabilities and includes links to Department-funded projects preparing adapted physical education personnel.

Federal Laws

States and schools are required to provide equal opportunity to participate in physical education and extracurricular athletics by children and youth with and without disabilities. The Individuals with Disabilities Education Act (IDEA) requires schools to provide a "free appropriate public education" in the "least restrictive environment." The definition of "special education" in section 602(29) of the IDEA includes instruction in physical education. Therefore, for some students with disabilities instruction in physical education may be a part of the special

education services prescribed in their individualized education program (IEP). Section 504 of the Rehabilitation Act (Section 504) and Title II of the Americans with Disabilities Act (Title II) are federal civil rights laws that prohibit disability discrimination, including in public schools. Under Section 504, schools that receive Federal financial assistance must ensure that children and youth with disabilities have an equal opportunity to participate in the program or activity of the school, including extracurricular activities. Under Title II, public entities, including public schools, may not discriminate on the basis of disability in providing their services, programs, and activities.

OCR enforces Section 504 and Title II in the context of education. OCR investigates complaints of discrimination on the basis of race, color, national origin, sex, disability, or age pursuant to these and other laws. OCR collaborates with the Office of Special Education and Rehabilitative Services in supporting improved educational opportunities for children and youth with disabilities through policy guidance, technical assistance, and information dissemination.

IDEA defines a child with a disability as a child having one of the disabilities specified in section 602(3) of the IDEA who, by reason of the disability, needs special education and related services. The following categories of disability are included in the section 602(3) of the IDEA: developmental delay (only for children under the age of 9); intellectual disability (formerly known as mental retardation); hearing impairments including deafness; speech or language impairments; visual impairments including blindness; emotional disturbance; orthopedic impairments; autism; traumatic brain injury; other health impairments; and specific learning disabilities. Identification criteria are typically developed in state regulations based on the statutory definitions of the specified disability terms in 34 CFR §300.8(c). Some children meet the identification criteria for more than one disability, (e.g. deaf-blindness or multiple

disabilities). In this document, the term "disabilities" refers to all categories of disability unless specifically noted. This inclusive meaning must inform the readers' understanding and interpretation of the document's suggestions, which are necessarily broad.[1]

Guidelines for Physical Activity

The *2008 Physical Activity Guidelines for Americans* (U. S. Department of Health and Human Services, 2008) recommend that children and youth have 60 minutes of physical activity of moderate and vigorous intensity daily in three types of activity—aerobic activities, muscle-strengthening activities, and bone-strengthening activities. The *Guidelines* include a brief mention of children and youth with disabilities (p. 19):

> Children and adolescents with disabilities are more likely to be inactive than those without disabilities. Youth with disabilities should work with their healthcare provider to understand the types and amounts of physical activity appropriate for them. When possible, children and adolescents with disabilities should meet the Guidelines. When young people are not able to participate in appropriate physical activities to meet the Guidelines, they should be as active as possible and avoid being inactive.

In order to reduce the risk of injury, children and youth are advised to increase their physical activity gradually and to engage in a variety of exercise, sport, and recreation activities.[2]

---

[1] Section 504 and the Americans with Disabilities Act use a different definition of disability. For purposes of this document, unless otherwise noted, the term, "disability," means the IDEA definition of disability. Although the authors of the cited works may apply different definitions of the term, "disability," the contents of these works are broadly applicable to children and youth with disabilities receiving services under IDEA.

[2] A variety of exercise, sport, and recreation activities promote balanced aerobic conditioning, muscle strengthening, and bone strengthening. Joints, muscle groups, and other body parts are used differently, thereby reducing the risk of injury due to repetitive motion or overuse (Foley, 2010).

Increased physical activity increases motor skills, which in turn facilitate increased physical activity (Foley, 2010).

The trend of childhood obesity and inactivity is increasing the focus on physical activity among children (e.g. The First Lady's *Let's Move*! campaign--information available at http://www.letsmove.gov/). Not only are inactivity and obesity even more prevalent among children with disabilities (Rimmer, 2008), inactivity and obesity can be more problematic for children and youth with disabilities because they can lead to and exacerbate secondary conditions associated with certain disabilities (Rimmer, Wang, Yamaki, & Davis, 2010).

Limitations in Our Current Knowledge

There is limited understanding of how the research on children without disabilities can be translated into guidance for physical activity programs for children with disabilities (Fleming, 2010). In spite of the public's awareness of the risks of inactivity and obesity, there is limited research providing evidence of effective practices and approaches to increase physical activity, to reduce obesity, and to maintain health among children and youth with disabilities. The few findings of the research done in clinical settings have not been adequately translated for application to PE and athletic activities in school and community settings. As a result of the limited research in this area, states, schools, and educators are faced with the challenge of developing and implementing practices to increase the participation of children and youth with disabilities in PE and athletics without a strong base of research evidence.

Even with the limited research on effective practices, there is growing consensus in the research literature regarding several common barriers to physical activity for children and youth with disabilities. The barriers include inaccessible facilities and equipment (Auxter, Pyfer,

Zittel, & Roth, 2010; Block, 2007; Rimmer, 2008; Rimmer & Rowland, 2007; Simeonsson, Carlson, Huntington, McMillen, & Brent, 2001; and Stanish, 2010); personnel without adequate training (Auxter, et al., 2010; Block, 2007; Rimmer & Rowland, 2007; and Stanish, 2010); and inadequate, non-compliant, or otherwise inaccessible programs and curricula (Auxter, et al., 2010; Block, 2007; Porretta, 2010; Rimmer, 2008; Rimmer & Rowland, 2007; Simeonsson, et al., 2001; and Stanish, 2010). The research base and professional opinion support the following suggestions for improving opportunities for children and youth with disabilities to participate in PE and athletic activity.

SUGGESTIONS TO INCREASE OPPORTUNITIES

States and school districts can increase opportunities for participation by reducing or eliminating common barriers to participation. In this section, we address common barriers and provide suggestions for increasing access.

ACCESSIBILITY

Accessibility includes the considerations of the area or environment in which physical activity takes place, the safety and security within the space, and specifications suggested for particular disabilities. Access is facilitated through adapted PE practices[3] and universal design principles[4] (U. S. Access Board, n.d.). For example, concrete play areas are being replaced by soft surfaces to reduce child injury. Because wood chips and sand interfere with mobility of children and youth in wheelchairs, solid soft surfaces are recommended to allow safe use of play areas by more children and youth (U. S. Access Board, n.d.).

The Title II regulations, which apply to public schools and their facilities, provide requirements for accessibility to persons with disabilities.[5] For example, Title II applies to public schools' play areas and provides requirements for their accessibility by persons with

---

[3] "Adapted Physical Education is physical education which has been adapted or modified, so that it is as appropriate for the person with a disability as it is for a person without a disability." (Adapted Physical Education National Standards at http://www.apens.org/whatisape.html)

[4] "The term, 'universal design,' means a concept or philosophy for designing and delivering products and services that are usable by people with the widest possible range of functional capabilities, which include products and services that are directly accessible (without requiring assistive technologies) and products and services that are interoperable with assistive technologies." (See Assistive Technology Act of 1998, as amended, 29 U. S. C. § 3002. IDEA uses the same definition. See 20 U.S.C. § 1401(35).)

[5] Among other things, the Title II regulations provide that new construction of a facility be done so that the facility is readily accessible to and usable by persons with disabilities. New construction and alterations commencing on or after March 15, 2012, are subject to new design standards under the Title II regulations, and these standards include specific requirements for play areas. See 28 C.F.R. §35.151. The Title II regulations also impose a requirement that each service, program or activity of a public entity, when viewed in its entirety, is readily accessible to and usable by persons with disabilities, and they establish program accessibility requirements that include requirements applicable to play areas. See 28 C.F.R. §35.150.

disabilities. Accessibility also refers to the opportunity to use facilities and equipment. Communities that provide accessible transportation to accessible facilities increase the opportunity for physical activity by children and youth with disabilities and their families.

Equipment

Appropriate equipment can help children and youth with disabilities participate in appropriate physical activity. Athletic equipment might need to be modified for safe use by some children and youth with disabilities. For other students with disabilities, specialized equipment may be needed. Activities involving the use of modified or specialized equipment can replace other less safe activities. Treadmills, for example, are effective in providing predictable walking and running conditions, which can be necessary and appropriate for some individuals with disabilities (Stanish, 2010). As another example, gaming systems that support movement detection technologies (e.g., Wii, Xbox 360, and PlayStation 3) can be used by some children and youth with disabilities to participate in sport simulations (Foley, 2010). Physical growth and development and changes in ability require continuous reevaluation and, as needed, modification of the fit and functionality of equipment for children and youth with disabilities.

Personnel Preparation

Knowledgeable adults create the possibility of participation among children and youth both with and without disabilities. Physical activities may be guided by a wide range of support personnel with various levels of training including other students, general and special education teachers, paraprofessionals, adaptive physical education specialists, and related service providers (e.g., occupational therapist or speech language pathologist). Appropriate personnel preparation and professional development to adapt games and activities to various ability and fitness levels are needed in order to increase opportunities for children and youth with disabilities.

Teaching Style

Inclusive teaching styles create a climate and culture of participation for children and youth with and without disabilities. The educational philosophy and beliefs of the individual teacher and the school system influence opportunity. Patterns of teaching must be informed by the need to safeguard the civil rights of all students, including those with disabilities, both by providing equal athletic opportunity and protecting students from reasonably foreseeable risks to their health and safety. In PE and athletic programs, the focus has traditionally been on competition rather than instruction, but has recently shifted to "new PE," which focuses on improvements by the individual student. Children and youth with disabilities and those without athletic prowess require adaptive opportunities and precise instruction for concerns such as poor motor coordination (Stanish, 2010).

Management of Behavior

Athletics in the school setting involve complex interactions in settings less controlled than the typical academic classroom. Team play and sportsmanship cannot be taught except through participation. Effective PE and athletics require a teacher or coach with strong behavior management skills. Certain disabilities are associated with characteristics that may interfere with the student's ability to act consistently like a good team player or otherwise conform to the social expectations of particular athletic activities. A few of these characteristics include poor impulse control, limited social awareness, and emotional lability.[6] School personnel should have the knowledge, skills, and abilities to address the interactional components of disabilities within the context of competition. Children and youth with and without disabilities can participate in PE

[6] "Emotional lability is a condition of excessive emotional reactions and frequent mood changes." (Mosby's Medical Dictionary, 8th edition, 2009)

and athletics more fully when social, emotional, and behavioral interactions are directly instructed, monitored, and remediated.

PROGRAM OPTIONS

PE and athletics can be offered in various degrees of inclusion in programs and activities with children and youth without disabilities. IDEA requires that each child with a disability participates with nondisabled children in these programs and activities to the maximum extent appropriate to the needs of that child.[7] Physical education services, specially designed if necessary, must be made available to every child with a disability receiving a free appropriate public education, unless the public agency enrolls children without disabilities and does not provide physical education to children without disabilities in the same grades.[8] Each public agency must take steps to provide nonacademic and extracurricular services and activities, including athletics, in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities.[9] For students served under IDEA, the student's IEP must include, among other things, a statement of the special education and related services, and supplementary aids, services, and other supports that are needed to meet each child's unique needs in order for the child to: (1) advance appropriately towards attaining the annual goals; (2) be involved in and make progress in the general education curriculum and to participate in extracurricular and other nonacademic activities; and (3) be educated and

[7] The IDEA Part B regulations in 34 CFR §300.117 require that the public agency 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.

[8] The IDEA Part B regulations in 34 CFR §300.108(b) require that each child with a disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled children unless the child is enrolled full time in a separate facility; or the child needs specially designed physical education, as prescribed in the child's IEP. The regulations in 34 CFR §300.108(d) require the public agency responsible for the education of a child with a disability who is enrolled in a separate facility to ensure that the child receives appropriate physical education services.

[9] The IDEA Part B regulations in 34 CFR §300.107 address nonacademic and extracurricular services and activities.

participate in such activities with other children with disabilities and nondisabled children.[10] The IEP team, which includes both general and special education teachers, might benefit from participation by a general or adaptive physical education teacher in order to develop the IEP for certain students. Section 504 and Title II also reflect the principle of inclusion in their mandate of equal access and require that students with disabilities are served in the most integrated setting appropriate to their needs.

CURRICULUM

Curriculum encompasses more than the age or grade lists of content standards, benchmarks, objectives, strategies, and assessments. Curriculum includes day-to-day implementation, which requires flexibility with the content in context. An accessible PE curriculum provides for that flexibility. Applying the universal design for learning (UDL)[11] framework to the PE curriculum increases opportunities for participation by providing multiple means for student engagement. The variety of options allows children with disabilities to choose activities of interest which increases their participation (Porretta, 2010). UDL also provides multiple means of presentation. Information technology shows promise in providing a new means of presentation. For example, "bug-in-the-ear" communicators allow sideline coaches and instructors to personalize the "real-time" explanation of game rules and procedures based on the needs of individual players with disabilities (Rimmer & Rowland, 2008).

---

[10] The IDEA Part B regulations in 34 CFR §300.320 (a) address the content required in a child's IEP and §300.320(a)(4) requires a statement of the special education and related services and supplementary aids and services and other supports to be provided to the child.

[11] "The term "universal design for learning" means a scientifically valid framework for guiding educational practice that— (A) provides flexibility in the ways information is presented, in the ways students respond or demonstrate knowledge and skills, and in the ways students are engaged; and (B) reduces barriers in instruction, provides appropriate accommodations, supports, and challenges, and maintains high achievement expectations for all students, including students with disabilities and students who are limited English proficient." (Higher Education Resources and Student Assistance, 20 U.S. C. § 1003)

PE curricula based on physical growth and the development of fitness and socialization can support the inclusion of children and youth with disabilities. The curricular focus on lifelong fitness and health can facilitate forming habits that will follow through to adulthood (Foley, 2010). Teachers and coaches increase successful inclusion by focusing on the camaraderie and fun of activity rather than on competition and winning.

An individual student's IEP must include goals and accommodations for PE and athletics, as needed (IDEA, 20 U. S. C. §1414(d)). The development of IEPs requires collaboration among professionals as well as parent participation. Parents might be reluctant to have their children participate in physical activity due to uncertainty about its effects and the possibility of teasing and ridicule from peers. The IEP team can better support the students' successful access to, and participation in, PE and athletics when these concerns are effectively addressed in the IEP.

Assessment, Progress, Achievement, and Grading

Assessment in PE and athletics should be planned and implemented so that progress and achievement can be rated accurately and fairly. Assessment instruments that compare the individual against herself or himself are able to measure both attainment and growth. These comparisons show the trajectory toward health and fitness, while avoiding the inappropriate application of some standardized benchmarks of health and fitness to children and youth with disabilities. For example, Body Mass Index has been shown to be inappropriate for people with certain disabilities who tend to have a different proportion of lean mass (Rimmer, et al., 2010). Some equipment and technologies may allow for more accurate assessments of the incremental improvements made by children and youth with disabilities. For instance, wheelchair scales increase the accurate measurement of a student's weight and a spreadsheet can track the changes.

Better assessment can lead to better instruction, feedback, grading practices, and ultimately better outcomes for children and youth with disabilities.

When competitive performance is the sole or primary criterion for grades in PE classes, some children and youth with and without disabilities might earn failing grades. The methods used to grade progress and achievement can be used to encourage participation among children and youth with disabilities. For an individual child whose IEP includes annual goals for PE and athletics, the IEP must include a description of how a child's progress towards meeting the annual goals will be measured.

CONCLUSION

The purpose of this document is to disseminate information on improving opportunities for children and youth to access PE and athletics. This document is the Department's initial response to GAO's recommendation, referring the reader to sources of additional information regarding the inclusion of children and youth with disabilities in PE and athletic extracurricular activities. Research and professional opinion support the suggestions for improving opportunities for children and youth with disabilities to participate in PE and athletic activity by addressing common barriers to increase access and participation.

States and school districts can increase opportunities for participation by reducing or eliminating common barriers to participation. The Appendices that follow provide references, examples and resources for increasing equal opportunities for children and youth with disabilities to participate in PE and athletics. The example from Maryland in Appendix B describes the only current state legislation addressing equal opportunity to access PE and athletics. The resources in Appendix C include projects and collaborative efforts that address physical activity among people with disabilities. Links to Department-funded projects preparing adapted physical education personnel are also provided in Appendix C.

APPENDIX A: REFERENCES

Auxter, D., Pyfer, J., Zittel, L., & Roth, K. (2010). *Principles and Methods of Adapted Physical Education and Recreation* (11th ed.). Boston: McGraw-Hill.

Block, M. E. (2007). *A Teacher's Guide to Including Students with Disabilities in General Physical Education* (3rd ed.). Baltimore, MD: Brookes Publishing.

Fleming, R. (2010, July 15). Translating general pediatric weight loss interventions for application with children with intellectual and developmental disabilities. Presentation at *Obesity in Children with Developmental and/or Physical Disabilities* meeting sponsored by the Eunice Kennedy Shriver National Institute of Child Health and Human Development (NICHD). Bethesda, MD.

Foley, J. (2010, July 15). Physical activity—Physical disabilities. Presentation at *Obesity in Children with Developmental and/or Physical Disabilities* meeting sponsored by the Eunice Kennedy Shriver National Institute of Child Health and Human Development (NICHD). Bethesda, MD.

Porretta, D. (2010, July 15). Physical activity—Intellectual and developmental disabilities. Presentation at *Obesity in Children with Developmental and/or Physical Disabilities* meeting sponsored by the Eunice Kennedy Shriver National Institute of Child Health and Human Development (NICHD). Bethesda, MD.

Rimmer, J. (2008, June/July). Promoting inclusive physical activity communities for people with disabilities. *President's Council on Physical Fitness and Sports Research Digest, 9*(2), 1-8.

Rimmer, J., & Rowland, J. L. (2007). Physical activity for youth with disabilities: A critical need in an underserved population. *Developmental Rehabilitation, 11*(2), 141-148. doi: 10.1080/17518420701688649

Rimmer, J., Wang, E., Yamaki, K., & David, B. (2010). Documenting disparities in obesity and disability. *FOCUS* Technical Brief #24. Austin, TX: SEDL.

Simeonsson, R. J., Carlson, D., Huntington, G. S., McMillen, J. S., & Brent, J. L. (2001). Students with disabilities: A national survey of participation in school activities. *Disability and rehabilitation, 23*(2), 49-63.

Stanish, H. (2010, July 15). Physical activity—Intellectual and developmental disabilities. Presentation at *Obesity in Children with Developmental and/or Physical Disabilities* meeting sponsored by the Eunice Kennedy Shriver National Institute of Child Health and Human Development (NICHD). Bethesda, MD.

U. S. Access Board. (n.d.). Accessibility guidelines for play areas: An overview. Retrieved from www.access-board.gov/play.

U. S. Department of Health and Human Services (HHS). (2010). *Trends in the Prevalence of Physical Activity: National YRBS: 1991 – 2009.* Available at http://www.cdc.gov/HealthyYouth/yrbs/pdf/us_physical_trend_yrbs.pdf.

U. S. Department of Health and Human Services (HHS). (2008). *2008 Physical Activity Guidelines for Americans: Be Active, Healthy, and Happy!* ODPHP Publication No. U0036. Washington, D.C.: Author. Available at www.health.gov/paguidelines/pdf/paguide.pdf.

U. S. Government Accountability Office (GAO). (2010, June). *Students with Disabilities: More Information and Guidance Could Improve Opportunities in Physical Education and Athletics.* Report to Congressional Requesters Number GAO-10-519. Washington, DC: Author. Available at www.gao.gov/products/GAO-10-519.

APPENDIX B:
AN EXAMPLE FROM STATE LEGISLATION AND POLICY: MARYLAND

2008 Maryland Fitness and Athletic Equity Act for Students with Disabilities

The Maryland law, unique in the nation and in full effect July 2011, requires local boards of education to develop policies to include students with disabilities in all curricular and extracurricular physical education and athletic programs. Specifically, the schools must provide students with reasonable accommodations to participate, the opportunity to try out for school teams, and access to alternative sports programs.

A Guide for Serving Students with Disabilities in Physical Education

www.marylandpublicschools.org/NR/rdonlyres/84C4C717-B8FF-486B-8659-79F297DF5B38/19715/Servingstudents2.pdf

The Maryland State Department of Education published this guide for schools to comply with the 2008 Maryland Fitness and Athletic Equity Act for Students with Disabilities.[12]

[12] As previously stated on page ii, the resources, information, and links cited in this document are for the readers' convenience and their inclusion herein does not constitute an endorsement by the U.S. Department of Education of any products or services.

APPENDIX C: RESOURCES

National Center on Accessibility

www.ncaonline.org

This center is supported through a cooperative agreement with the National Parks Service. It promotes access and inclusion for people with disabilities to parks, recreation, and tourism. The center promotes personal wellness and community health.

National Center on Physical Activity and Disability

www.ncpad.org

NCPAD is supported by the Centers for Disease Control and Prevention (CDC). It is an information center concerned with physical activity and disability. The center provides an online source for information about people of all ages with disabilities, including Web pages that list resources by categories.

National Consortium for Physical Education and Recreation for Individuals with Disabilities

www.ncperid.org

NCPERID promotes research, professional preparation, service delivery, and advocacy of physical education and recreation for individuals with disabilities.

The President's Challenge

www.presidentschallenge.org/participate/ed-disabilities.shtml

The President's Challenge to increase physical fitness is made to all children, youth, and adults of all ages and abilities. Detailed information about the challenge and resources to support individuals and school or community groups in meeting the challenge are made available through the President's Council on Fitness, Sports & Nutrition.

Project UNIFY

www.specialolympics.org/projectunify.aspx

The Special Olympics' Project UNIFY is supported by the Office of Special Education Programs (OSEP). It is a K-12 intervention that strategically activates youth, engages educators and promotes communities of acceptance and inclusion where all young people are agents of change—fostering respect and dignity for people with Intellectual Disabilities (ID), utilizing the sports and education initiatives of Special Olympics.

Adapted Physical Education Personnel Preparation Projects Funded by the U.S. Department of Education, Office of Special Education Programs

Adapted Physical Education Training of U. S. Pacific Islanders Using a Teacher-Consultant Model (Project APERT), University of Hawaii

Nathan Murata, Ph.D.

nmurata@hawaii.edu

Center on Health and Adapted Physical Education, University of Wisconsin-La Crosse

Garth Tymeson, Ph.D.

tymeson.gart@uwlax.edu

Personnel Preparation of Highly Qualified Adapted Physical Education Teachers in Pennsylvania, Slippery Rock University of Pennsylvania

Robert Arnhold, Ph.D.

Robert.arnhold@sru.edu

Preparation of Fully Credentialed, Highly Qualified Adapted Physical Educators at the Masters Level for Students with Low Incidence Disabilities, Texas Women's University

Ronald French, Ph.D.

rfrench@mail.twu.edu

Preparation of Leadership Personnel in Adapted Physical Education, Oregon State University

Jeffrey McCubbin, Ph.D.

jeff.mccubbin@oregonstate.edu

Project ADAPTED PE, University of Utah

Hester Henderson, Ph.D.

hester.henderson@health.utah.edu

Project for Preparing Adapted Physical Education, Western Michigan University

Debra Berkey, Ph.D.

debra.berkey@wmich.edu

Project P. P. A. P. E.: Professional Preparation of Adapted Physical Education, North Carolina Agricultural and Technical State University

Gloria Palma, Ph.D.

palmag@ncat.edu

Using a Hybrid Online Master's Degree Program to Train Qualified Adapted Physical Education Teachers, Western Michigan University

Jiabei Zhang, Ed.D.

zhangj@wmich.edu

The Department of Education's mission is to promote student achievement and preparation for global competiveness by fostering educational excellence and ensuring equal access.

www.ed.gov