

# Excerpt from the [Student Activity Funds FAQ](#) Document

## Support for Participation by Students with IEPs or 504 Plans

**1. Question:** What are the obligations of school districts concerning student activities for students with disabilities?

**Answer:** School districts, pursuant to IDEA and according to the Office for Civil Rights (OCR) and the Office of Special Education Programs (OSEP), must provide students with disabilities with an “equal opportunity for participation” in school activities. Iowa Admin. Code r. 281—41.107(1); 34 C.F.R. § 300.107(a). But generalizations cannot be made as to how that must be accomplished, and individual assessment is necessary to determine the appropriate level of participation. It is not an arbitrary decision on the part of the district, its administration, or its coaches. It is a child-specific inquiry. Refer to guidance from OCR and IDEA in this matter.

**2. Question:** If a student has an Individualized Education Program (IEP), does that mean the district must automatically waive all fees and dues related to extracurricular activities?

**Answer:** No. IDEA states that students with disabilities can be charged the same school fees and activity dues that are charged to all other non-disabled students. Iowa Admin. Code r. 281—41.39(3); 34 C.F.R. § 300.39(c). Of course, fee waiver requirements would apply to students with disabilities the same as non-disabled students. Iowa Admin. Code Chapter 281—18.

**3. Question:** If a student has an IEP, is the district required to provide similar IEP services necessary to permit the student to participate in a district-sponsored student activity?

**Answer:** Yes, if it is necessary per the IEP for the child to have an equal opportunity for participation. Iowa Admin. Code r. 281—41.320(1); 34 C.F.R. § 300.320(a). Refer to OCR and IDEA guidance.

**4. Question:** Is it necessary for the school activity to relate to the child's goal before the school district is obligated to provide services?

**Answer:** No, a school district is obligated to provide the child with an equal opportunity for participation in cocurricular and extracurricular activities, even if the chosen activity does not relate to the child's IEP goals.

**5. Question:** What is meant by an “equal opportunity for participation”?

**Answer:** As a general rule, this refers to “leveling the playing field” and ensuring the needs of children with disabilities are met as effectively as the needs of children without disabilities. A child with a disability must have an equal opportunity to participate in and benefit from the activity, which may include providing supports to the child or modifying nonessential elements of the activity. Please keep the following in mind.

- A child with a disability may not be excluded from an activity merely because she has a disability (“She’s in special education. She’ll never be able to handle our team’s complex playbook!”).
- A child with a disability is entitled to supports and supplementary aids and services necessary for the equal opportunity for participation (e.g., a large print script or large print sheet music, adult support).
- A child with a disability may be entitled to reasonable modifications of an activity; however, a school need not make a requested modification if it would result in a fundamental alteration of the activity or one that would give the competitor a competitive advantage. If the activity is at issue

was cross country, a reasonable modification might be to provide a deaf runner a visual cue that is synchronized with the starting gun. In contrast, cross country need not be fundamentally altered, such as by shortening the length of the course or providing a runner with a disability a one minute head start.

- Equal opportunity for participation does not mean that all children with disabilities must be guaranteed a certain level of participation (a spot on a team, a certain number of lines in a play, a certain amount of playing time, first chair in orchestra, a solo in the end-of-year choir concert), and IEP teams and 504 teams do not have the authority to make those decisions. Children with disabilities, with or without reasonable modifications and supports, still must meet skill levels appropriate to the activity, as determined by the leader of that activity (e.g., coach, director, or conductor).
- Schools may impose legitimate safety-related criteria for participation in an activity. A child may be excluded from an activity only if the child's safety cannot be addressed with reasonable modifications or the use of supplementary aids and services. For example, a child with a disability is interested in playing interscholastic football. If the child needed an adult to monitor fluid intake during competition, that may be a required modification. If the child's impairment precluded any physical contact, there would be no way this child's disability could be accommodated, even with modifications or supports.

**6. Question:** May school districts require children with disabilities to participate in separate activities solely for children with disabilities?

**Answer:** No. Children with disabilities must have the opportunity to participate with children without disabilities to the maximum extent appropriate. Children with disabilities cannot be categorically restricted to segregated activities. For example, a child with a disability who wishes to participate in a school's track and field team may not be told "You can only do Special Olympics" if the child is able to participate in the school's track and field team, with or without modifications and supports, if the child was given an equal opportunity for participation.

**7. Question:** What happens if students with disabilities cannot participate in a district's currently offered student activities program?

**Answer:** For students with disabilities who are unable to participate in a school's current activity program, OCR advised that school districts "should create additional opportunities for those students with disabilities." OCR recognizes that there is no legal obligation to do so; however, it encourages school districts to do so voluntarily. OCR provides the following guidance on this option:

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.

According to OCR, a school district's separate activities must be "supported equally as compared with the district's other ... activities." That would depend on the facts of each case. If a school maintains a choral group for students with disabilities, for example, OCR would ask how other choral groups are supported. If the concert choir goes on a tour, does the choral group for students with disabilities go on a tour? If the concert choir has a winter concert on school premises and promoted by the school district, does the choral group for students with disabilities

also have a similarly supported winter concert (whether that be a separate program or on the same program as the concert choir)?

**8. Question:** Does “non-academic” as used by OCR mean “non-school?”

**Answer:** No. “Non-academic” means things outside of the academic classroom provided by or through the school district. “Non-school” means activities provided or sponsored by outside or private entities rather than the school district.

**9. Question:** Is there any situation where a “non-school” activity could be deemed to be a “non-academic” activity of the school district?

**Answer:** Yes, according to OCR guidance. If the school district provides substantial assistance to the non-school activity, it could be deemed to be a district’s activity for purposes of federal requirements (such as IDEA, 504, or OCR). The example given was a private bowling activity after school where the school district was providing staff, student transportation and promotion during the school day or during school activities. How much assistance would be considered “substantial” was not clarified.

**10. Question:** If a student has an IEP or a 504 Plan and wants to participate in a community-based activity program (such as Park and Rec), is the district required to provide similar IEP services necessary to permit the student to participate?

**Answer:** No, as long as the activity is a non-school activity/program and the district does not provide substantial assistance (staff, facilities, student transportation, referrals or promotion, etc.) to the community-based activity program.

**11. Question:** If a student has a service animal, is the student permitted to bring that animal with him/her to student activities, either as a spectator or as a participant?

**Answer:** Yes. Keep in mind that the service animal may not fundamentally alter the program or activity. For example, a child with a disability may have a service animal on the sidelines of an interscholastic football game; however, it would be a fundamental alteration of the game of football to allow the service animal onto the field during game action.

**12. Question:** If a child with a disability is able to participate in an integrated activity, may the child also participate in a separate activity for persons with disabilities?

**Answer:** Yes, if the child with disabilities is eligible for both activities and it is otherwise feasible to do so (e.g., no scheduling constraints). For example, if a child is eligible to participate in concert choir and a separate choral group for persons with disabilities, the child may choose to participate in both, in one, or in neither.

**13. Question:** If separate activities solely for children with disabilities are not required, may a school district discontinue offering them?

**Answer:** While OCR states that adding activities may be voluntary, it is likely that OCR would conclude that discontinuing an existing separate program or activity solely for students with disabilities would violate the ADA and Section 504, unless there was a legitimate nondiscriminatory reason for doing so (e.g., lack of student interest).

**14. Question:** Is the director of a separate activity for children with disabilities (e.g., the coach for the Special Olympics Team) paid from special education funding?

**Answer:** No. However, the separate activity, such as Special Olympics, might be a student activity if the separate activity is the alternative athletic/competitive experience the district (board) is voluntarily using to provide equitable opportunity under OCR guidance. In that case, it would be paid for in the same way as

any other student activity, including transportation for the participants, but will not be paid from special education funding.

**15. Question:** Where can I find more information about these topics?

**Answer:** For more information, please consult the following resources.

- Americans with Disabilities Act, Title II, regulations:  
<http://www2.ed.gov/policy/rights/reg/ocr/edlite-28cfr35.html>
- Section 504 Regulations: <http://www2.ed.gov/policy/rights/reg/ocr/edlite-34cfr104.html>
- United States Department of Education, Office for Civil Rights, "Guidance on Schools' Obligation to Provide Equal Opportunity to Students with Disabilities to Participate in Extracurricular Athletics" (Jan. 25, 2013):  
<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201301-504.pdf>
- Letter to Negrón (OCR, Dec. 16, 2013):  
<https://www.nsba.org/sites/default/files/reports/OCR%20Dec.%202016%20%20Letter%20-%20RE%20-%20NSBA%20May%202013%20Letter.pdf>