

Section 504 Discrimination Claims Extend to Nonacademic Programs and Services

While school districts are not required to make fundamental or even significant modifications to accommodate the handicapped in nonacademic programming, according to the courts, schools may be required to make reasonable modifications in order to ensure participation by such students. Failure on the part of a school district to reasonably accommodate handicapped students in nonacademic programming may result in a school district facing discrimination claims under Section 504 of the Rehabilitation Act of 1973 (“Section 504”) and the Americans with Disabilities Act (“ADA”). Nevertheless, a significant number of school districts fail to consider the accommodations some disabled students may require to participate in district sponsored nonacademic and extracurricular activities.

Nonacademic services can include, but are not limited to, such district-sponsored programs as day care, after-school care, summer recreational programs, interscholastic athletics, and dances. Generally, school districts are required to provide handicapped students with *reasonable* accommodations to ensure such students have an equal opportunity to participate in district sponsored services and activities. However, what constitutes *reasonable* is a vague standard, which has not been clearly defined by either the United States Department of Education’s Office for Civil Rights (“OCR”) or state and federal courts.

OCR has opined that little case law exists applying Section 504 to nonacademic programs offered by a school district. An OCR *Staff Memorandum* notes that because such programs are noneducational in nature, they are not regulated under the *Free Appropriate Public Education* mandates of Subpart D of the Section 504 regulations. Instead, under Section 504, non educational programs are considered “nonacademic services” provided by a recipient of federal financial assistance. Accordingly, in operating any such program, a district is still bound by the antidiscrimination prohibition of Section 504.

While it is undisputed school districts must offer meaningful and equal access to its non academic programs, what remains unclear is what the courts deem a reasonable accommodation under Section 504 and the ADA. Unfortunately, there appears to be no set standard, or litmus test to determine if a proposed accommodation to a nonacademic program is reasonable. Instead, the courts analyze each matter on a case by case basis.

Obviously, one of the major factors contributing to a school district’s denial of a proposed accommodation are the financial implications such an accommodation would have on the program. However, regardless of a school district’s reason for denial, should a district deny a disabled student access to its nonacademic program, the district will have the burden to prove the proposed accommodations were in fact unreasonable during any adjudication on that issue. Presently, a district can demonstrate a requested accommodation to a noneducational program is unreasonable if it can show that the extra assistance will: (1) be an undue burden to the program in question; or (2) alter the fundamental nature of the program.

To determine whether a proposed accommodation is an undue burden on the program in question, or alters the fundamental nature of the program, the courts consider a series of factors about the program in question. Specifically, OCR and the courts will consider (1) the nature and

cost of the proposed accommodation; (2) the financial resources of the program/site involved, (3) the number of persons employed at the site, and (4) the effect on expenses and resources for the program.

The above considerations are but a handful of the factors the OCR and the courts will analyze as part of a Section 504 discrimination claim relating to nonacademic programming. In order to minimize potential discrimination liability under Section 504, school districts should consider nonacademic programming and services in its school board policies related to handicapped students.

Clients who have questions regarding issues discussed in this article, or any education law matter, should feel free to call us at 215-345-9111.