



*Working with and through our State Associations, NSBA Advocates for Equity
and Excellence in Public Education through School Board Leadership*

VIA EMAIL AND USPS

May 21, 2013

The Honorable Seth M. Galanter
Acting Assistant Secretary for Civil Rights
Office for Civil Rights
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202

Re: Dear Colleague Letter Issued January 25, 2013

Dear Mr. Galanter:

The National School Boards Association (NSBA) shares the Department of Education's (US Ed) deep concern for protecting students, disabled and non-disabled, from all forms of discrimination in our nation's schools, including those students with disabilities who may wish to participate in their public school district's extracurricular athletics program. NSBA is committed to helping school districts across the country develop and implement policies to address discrimination against all students,¹ to create a school climate of inclusion in all educational programs offered by public schools,² including extracurricular athletics, and to bring awareness to the health, educational, and

¹ Among many policy statements expressing its commitment to preventing discrimination against all students, including students with disabilities, NSBA's Delegate Assembly has adopted the following:

Beliefs & Policies, Art. II, § 3.2: NSBA believes that school boards should ensure that students and school staff are not subjected to discrimination on the basis of socioeconomic status, race, color, national origin, religion, gender, disability, or sexual orientation.

Beliefs & Policies, Art. IV, § 2.11: NSBA believes that all public school districts should adopt and enforce policies stating that harassment for any reason, including but not limited to harassment on the basis of race, ethnicity, gender, actual or perceived sexual orientation, gender identity, disability, age, and religion against students or employees will not be tolerated and that appropriate disciplinary measures will be taken against offenders....

² Beliefs & Policies, Art. I, § 1: NSBA believes that to help all students achieve state standards and reach their full academic potential, federal, state, and local policy makers should: ... provide the highest quality education for each child, and equal educational opportunity for all children; ... [and]; ensure that all children receive the services for which they are eligible;

Beliefs & Policies, Art. I, § 1.1: School districts should be organized so they can provide the best education programs for all public elementary and secondary students.... School boards should have the authority to develop restructuring strategies, as they deem appropriate.

Beliefs & Policies, Art. III, § 2: NSBA believes that full funding of federal public education programs is an essential step in improving educational opportunities for all children [,and ensuring] that our nation's students have the opportunity to meet the challenge of world-class standards and responsible citizenship through these priorities: ... (k) providing funding to meet school infrastructure and personnel needs to improve the safety and health of all students and to improve the quality of the learning environment;

Beliefs & Policies, Art. IV, § 1.2: Public schools should provide equitable access and ensure that all students have the knowledge and skills to succeed as contributing members of a rapidly changing, global society, regardless of

social benefits to be gained by students as a result of participation in extracurricular athletics at school.³ NSBA, our member state associations of school boards, our 3,000-member Council of School Attorneys, and the more than 13,500 public school districts across the nation we represent welcome guidance to address the very important issue of how to provide equal opportunities for participation in extracurricular athletics by all students, including students with disabilities. It is in this spirit of cooperation and common purpose that we write to express concern and request clarification over certain aspects of the January 25, 2013 Dear Colleague Letter (DCL) issued by the Office for Civil Rights (OCR).

As outlined in greater detail below, NSBA's concern is that absent clarification, OCR's expansive reading of the law in some aspects, and what now appears to be the blending of OCR enforcement standards to be applied in Section 504 matters,⁴ as stated in the DCL, will generate uncertainty in the courts about applicable standards;⁵ create confusion among school attorneys, educators, school officials and parents as to methods of implementation; invite misguided litigation that will needlessly drain precious school resources; and, create adversarial climates distracting schools from their overall educational mission.

To avoid these potential outcomes, NSBA urges OCR to join us in a dialogue that can lead to additional points of clarification of OCR's position as expressed in the DCL. With a clear understanding of the requirements of the law and the suggestions made in the DCL, school districts can continue to work to ensure all students, including students with disabilities, have equal

factors such as race, gender, sexual orientation, ethnic background, English proficiency, immigration status, socioeconomic status, or disability.

Beliefs & Policies, Art. IV, § 2: NSBA believes that students must have safe and supportive climates and learning environments that support their opportunities to learn....

³ Beliefs & Policies, Art. IV, § 1.1: NSBA recognizes the importance of the social, emotional, physical, and cognitive development of children and encourages local school boards to adopt policies, pass resolutions, and support effective practices toward that end.

Beliefs & Policies, Art. IV, § 3.20: NSBA supports locally determined school policies and programs that promote lifelong physical activity and healthy eating habits as necessary strategies for improving student achievement and preventing health problems. NSBA believes that local school boards should: (a) provide adequate opportunities for students to participate in physical education classes and related activities;

Beliefs & Policies, Art. IV, § 4.5: ... NSBA believes that before and after-school, as well as weekend and summer programs, particularly when they engage diverse community resources, are effective strategies for improving academic achievement, enhancing student wellness, reducing chronic absenteeism, preventing juvenile crime, and fostering 21st Century Skills while building and strengthening positive relationships between schools and communities.

⁴ One issue is the FAPE vs. "equal opportunity to participate" standards. The other is the FAPE vs. "reasonable accommodation" standards, which are thoroughly discussed in an article by Ronald D. Wenkart, titled "*The OCR-Created 'Right' to a Free Appropriate Public Education Under Section 504: Time for a Challenge*," INQUIRY & ANALYSIS (Nat'l Sch. Bds. Ass'n January 2013), <http://www.nsba.org/SchoolLaw/Issues/SpecialEd/IA-Section-504-January-2013.pdf> In Mr. Wenkart's article, he identifies the two different standards OCR applies in Section 504 discrimination cases depending on the type of federal funds recipient involved: the "reasonable accommodation" standard (applied to employers, post-secondary education institutions, and other recipients of federal assistance); and the "free appropriate public education" standard (applied only to K-12 public education recipients).

⁵ See, e.g., *T.K. v. New York City Dept. of Educ.*, 779 F.Supp.2d 289, 312 (E.D.N.Y. 2011) (While the general requirements of IDEA are well established, the question of whether bullying can be grounds for finding that a school district deprived a student of a free and appropriate education is an open question in the Second Circuit. There is, however, some indication from this circuit's court of appeals that it might be willing to extend FAPE protections to bullying. Three other circuit courts of appeals have expressly noted that bullying can be a basis for denial of a FAPE, but a common framework under which to analyze the issue has not emerged. (internal citations omitted)).

opportunities to participate in their school district's extracurricular athletics program.

NSBA's concerns with the DCL fall into three main areas of inquiry:

- I. Expansion of OCR's View of Its Authority Under Section 504
- II. Confusing Blend of OCR Enforcement Standards
- III. Need for Clarity in Ultimate Conclusions in DCL

I. Expansion of OCR's View of Its Authority Under Section 504.

In the DCL, OCR appears to be taking a more expansive view of its authority under Section 504 to regulate the conduct of school districts with respect to the issues listed below.

A. Individual Assessments.

OCR's regulation⁶ on evaluations of students with disabilities focuses on individual assessments of a student's *educational* abilities and possible need for modifications, services, and/or aides in the classroom, basing those decisions on educational data, testing, academic performance, and input from a student's *educators*. However, in the DCL, it now seems that OCR is suggesting, possibly requiring, that an individual assessment of a disabled student's ability to participate in athletics needs to take place, as well.⁷ OCR's regulation does not speak to this suggestion/requirement at all, nor does it list the types of information that must be considered, and what qualifications the members of the assessment team (presumably, a type of "504 team") need to make an informed decision on a disabled student's athletic abilities and any related safety/health hazards for the student and other athletes.

OCR's suggestion that schools undertake another individual assessment seems to contemplate a wholly separate 504 Team meeting, should the student's athletic participation request occur at a time other than the annual 504 *educational* meeting. It also seems to suggest that a different make-up of the team may be required for an "athletics" assessment. But, because the regulations and the DCL provide no guidance as to that make-up, school districts now could be placed in the unenviable position of attempting to comply with the new "guidance" in good faith and still face second-guessing by OCR.⁸

NSBA agrees that decisions arising in an inquiry into providing an equal opportunity for participation in extracurricular athletics to a particular student must be individualized. Depending on the student and the sport, the issues under inquiry might pertain to safety, skill level, modifications, or fundamental alterations. To prevent confusion over how these decisions are to be made, OCR

⁶ 34 C.F.R. § 104.35 (2013).

⁷ Letter from Seth M. Galanter, U.S. Dep't of Educ. Ass't Sec'y for Civil Rights, to Colleagues, at 7 (Jan. 25, 2013) [hereinafter "Dear Colleague Letter"].

⁸ *Hollenbeck v. Board of Educ. of Rochelle Twnp.*, 699 F. Supp. 658, 665 (N.D. Ill. 1988) (The IEP/Section 504 team and the evaluation data to be considered for placement decisions "are primarily academically based Thus, [the team] is not ideally suited for determining safety in athletic pursuits." Notwithstanding, the court found that "[t]his type of procedure, however unwieldy, was chosen to determine safety and if tailored to the task at hand, is as appropriate as any procedure.").

should clarify whether an individualized inquiry process is, in fact, required to be performed for every disabled student's request for an equal opportunity to participate, with decisions made by a team comprised of the parents, student, individuals familiar with the student, individuals with expert knowledge on the student's physical/mental condition and performance capabilities, and individuals with expert knowledge on any relevant aspect of the athletic activity involved. OCR should also clarify whether it will apply its customary standard of review if a district decision is challenged, *i.e.*, reviewing the *process* used to ensure consistency with the law, as opposed to the team's *decision* and not substituting OCR's judgment for that of a disabled student's 504 (athletics) team.

Additionally, NSBA hopes that OCR's position, that its Section 504 regulations supersede "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, . . . on the basis of disability,"⁹ is not so inflexible with regards to students with *physical disabilities*, as opposed to mental disabilities, as to prohibit school districts and athletic associations from "err[ing] on the side of caution and restrict[ing] the type of athletic events such students can participate in"¹⁰ where their physical safety/health might be put in jeopardy.

The health and welfare of the nation's students are paramount to NSBA. NSBA believes experienced, professional educators, and school and athletics association officials are best placed to implement decisions to ensure the safety, health and welfare of students in athletics. OCR should extend a great degree of deference to the decision-making processes of these professionals who on a case-by-case basis routinely rely on available medical and other related information to balance the potential safety/health risks to students with physical disabilities with participation in extracurricular athletics.¹¹

B. Need for Clarity in Participation Opportunities for Students with Disabilities.

I. "Opportunity to Benefit."

The DCL states that Section 504 regulations require "a school district . . . 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."¹² It is helpful that OCR reiterates in the DCL that "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." Similarly helpful is OCR's emphasis that "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

⁹ Dear Colleague Letter, *supra* note 7 at 5.

¹⁰ Brianna Forbes, "Effects of Restrictions in Athletic Policies on Students with Disabilities," INQUIRY & ANALYSIS (Nat'l Sch. Bds. Ass'n July 2007).

¹¹ *Poole v. South Plainfield Bd. of Educ.*, 490 F. Supp. 948 (D.N.J. 1980) (concluding student with one kidney could compete on high school wrestling team, since only reason for exclusion was doctor's fear of injury); *Knapp v. Northwestern Univ.*, 101 F.3d 473 (7th Cir. 1996) (concluding that objective evidence, such as reasonable medical judgment, student's medical history, and fatality of illness (heart defect), are all criteria used to decide student was not otherwise qualified to participate on basketball team; student's heart defect could not be easily eliminated, thus he was not otherwise qualified under Section 504).

¹² Dear Colleague Letter, *supra* note 7 at 3 (emphasis added).

selection or competition criteria are not discriminatory.”¹³ Unfortunately, neither OCR nor its Section 504 regulations elaborate on what it means for a school district to provide “an opportunity to benefit” from its *elective* extracurricular athletics program.¹⁴

If OCR’s position is that the Section 504 regulations require “an opportunity to ... *benefit*” from a school district’s *elective* extracurricular athletics program,¹⁵ as opposed to the original statutory purpose of Section 504 to *prohibit* discrimination on the basis of disability,¹⁶ OCR should clarify whether an “opportunity to benefit” means that a public school district must *affirmatively provide*¹⁷ a student with a disability the opportunity to participate in any/all of the aspects of the day-to-day operations/activities of the teams that make up a district’s extracurricular athletics program. Beyond this specific issue, school districts would benefit from clarification about those instances in which OCR would require schools to provide a student with a disability with “an opportunity to benefit” from a school district’s athletic program and what has changed in OCR’s approach to its enforcement of the regulations that would impact the way school districts approach implementation and compliance.¹⁸

2. “Fully and Effectively” Standard.

In the DCL, OCR indicates that in assessing Section 504 compliance, it considers whether a public school district’s extracurricular athletics program “fully and effectively” meets the “interests and abilities” of its students with disabilities.¹⁹ This language mirrors in some respects the standards used to assess “Title IX” compliance in athletic programs. This mixing of standards causes confusion in the school community, and raises three concerns: (1) there is no provision/requirement in OCR’s Section 504 regulations addressing the “fully and effectively” standard; (2) there is no requirement in the Section 504 regulations that a public school district’s extracurricular athletics program “fully and effectively” meet the “interest and abilities” of its students **without** disabilities (separate and apart from the gender issue); and (3) reading such a legally-unsupported standard into the Section 504 regulations would seem to *create a preference* in favor of students with disabilities related to athletics that is neither currently available nor required for students **without** disabilities.

School districts would benefit from clarification by OCR that disavows any intent to conflate the compliance assessment standards under Title IX with Section 504. Failure to clarify this position

¹³ *Id.*

¹⁴ *Id.*

¹⁵ 34 C.F.R. 104.4(a), (b)(1)(i)-(iv).

¹⁶ 29 U.S.C. § 794 (2013).

¹⁷ In *Southeastern Community College v. Davis*, 442 U.S. 397, 411-12 (1979), the U.S. Supreme Court described the limits on the authority of a federal agency to impose affirmative obligations in the Section 504 context. (“Although an agency’s interpretation of the statute under which it operates is entitled to some deference, ‘this deference is constrained by an obligation to honor the clear meaning of the statute, as revealed by its language, purpose and history.’ ... Here, neither the language, purpose, nor history of Section 504 reveals an intent to impose an affirmative action obligation on all recipients of federal funds. Accordingly, we hold that even though HEW has attempted to create such an obligation itself, it lacks the authority to do so.” (internal citations omitted)). See also Wenkart, “The OCR-Created ‘Right,’” *supra* note 4.

¹⁸ Richard E. Kroopnick, *Section 504, OCR and Extracurricular Athletic Activities: Confusion Over the Rules of the Game*, INQUIRY & ANALYSIS (Nat’l Sch. Bds. Ass’n, March/April 2013), <http://www.nsbba.org/SchoolLaw/Issues/SpecialEd/IA-MarchApril-2013-Section-504.pdf>.

¹⁹ Dear Colleague Letter, *supra* note 7 at 11.

will create confusion that detracts from an understanding of the requirements of the law. This lack of clarification will also invite courts to sanction what amounts to un-promulgated, untested rules under the guise of deference to US Ed, which would deny both OCR and school districts the opportunity respectively to consider and provide valuable input that could facilitate the implementation and development of effective guidance.

C. Need for Clarity as to Availability of Other Modifications.

The DCL appears to expand a school district's obligations under Section 504 by requiring districts to do more than demonstrate that a specific requested modification would constitute a fundamental alteration to limit a student's participation in extracurricular athletics. Instead, the DCL appears to create and impose on the school district an affirmative obligation by which the district "*is required*" to determine whether other modifications might be available that would permit the student's participation. While some alternative modifications may be readily apparent to the district, this may not always be the case. In such situations, it is unclear to what extent and at what point a school district may cease its inquiry into the availability of other modifications, and not be found out of compliance. In essence, how much searching is enough and how great should the scope of the inquiry be?

II. Confusing Blend of OCR Enforcement Standards.

A. FAPE vs. "Equal Opportunity to Participate."

OCR also should clarify its position on the application of OCR's statutorily-unsupported FAPE standard to the *elective* extracurricular athletics program of a public school district to the degree and in the manner that OCR now asserts. In parts of the DCL, primarily footnote 8 and related language, OCR states that the Section 504 FAPE standard "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," citing its regulation.²⁰ The DCL further states that "[i]n 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.*"²¹

Without further clarification about OCR's intent, this sweeping language in the DCL appears to have the insalubrious consequence of rendering a great number of extant IEPs in violation of Section 504, for "fail[ing] to ensure Section 504 FAPE." Why? Because few IEPs likely contain any reference to or provision about a student's request (if any) for an equal opportunity to participate in extracurricular athletics. Saddling school districts with such a presumption of noncompliance is unfair, and minimizes the good faith efforts of the student's IEP team, *including the attending parents and students*, particularly in those instances where the issue may not have been raised, or where it may have been considered and the outcome was such that no notations in the IEP or 504 Plan or the meeting minutes were deemed necessary. As a result, OCR should clarify that it did not intend to

²⁰ Dear Colleague Letter, *supra* note 7 at 4 n.8.

²¹ *Id.* (emphasis added).

render most of the hundreds of thousands of current IEPs in public school districts across the country insufficient under the IDEA as to this particular issue.

But, the confusion does not stop there. Because the Section 504 regulations could be read to mean literally a “free appropriate public *education*,” participation in a public school’s *extracurricular athletics* program could be understood to be purely *elective* and not related to the student’s *required* educational component. This appears to be supported by the DCL’s treatment of the Section 504 regulations, which discuss a disabled student’s evaluation and placement in terms of *educational*, rather than *athletic*, needs. Similarly, much of the DCL speaks to this “equal opportunity” in looking at disabled students’ requests to participate. Thus, it would seem that a FAPE standard would have no applicability to extracurricular athletics activities, particularly when looking at Section 104.37(a)(1), which focuses on an “equal opportunity for participation.” This confusion will create a new litigious path for those plaintiffs seeking to capitalize on a school district’s uncertainty as to how to identify and meet its obligations to accommodate a disabled student’s request for an opportunity to participate in extracurricular athletics.

III. Need for Clarity in the Ultimate Conclusions in the DCL.

A. Findings of Noncompliance.

The need for clarity with respect to the issues described above is highlighted by apparent tensions in the text of the DCL and public statements made by US Ed. Earlier this year, US Ed spokesperson Daren Briscoe suggested that the DCL is offered only as permissive, rather than mandatory, guidance for school districts in a blog posting on *Education Week*. According to the posting, US Ed’s position is that [t]he guidance does not say that there is a right to separate sports programs such as wheelchair basketball. Rather, the guidance ‘urges’ – but does not require – that when inclusion is not possible, school districts find other ways to give students with disabilities the opportunity to take part in extracurricular athletics.”²² Given this apparent conflict, school districts would benefit from a more definite statement from OCR as to whether a school district’s failure to meet the “obligations” will be considered a violation of Section 504 (and Title II of the ADA) and subject to agency enforcement, or whether US Ed is offering aspirations—suggestions which school districts may consider, but are not required to implement.

B. No New Requirements Set By the DCL.

OCR should state in clear and unambiguous terms that it is neither adding requirements to the applicable law, nor establishing a new enforcement standard. Although a footnote does state that the DCL “does not add requirements to applicable law,”²³ the examples cited in the DCL imply that OCR is taking a more expansive view of the law and its implementing regulations.

²² Michele McNeil, “Did the Ed. Dept. Really Create a Right to Wheelchair Basketball?” *Education Week Blog*, Jan. 25, 2013, available at <http://blogs.edweek.org/edweek/campaign-k-12/2013/01/did-the-ed-dept-really-create.html?qs=michele+mcneil>.

²³ Dear Colleague Letter, *supra* note 7 at 2.

C. No Mandates to Create New Teams.

In its discussion about a school district's consideration of creating "separate and different teams" for students with disabilities, through any of the avenues identified, OCR may be overstepping its federal statutory bounds by inserting itself into a local school district's ability to guide its own programs.²⁴ Moreover, when the DCL states that "support" for such teams should be provided equally to that of the school district's other athletic activities, OCR may be creating another unfunded mandate.²⁵ At a time when school districts struggle to meet the fiscal demands brought about by the recent national economic down turn, the federal government should be partnering with school districts to address these challenges, rather than burdening local communities with federal, one-size-fits-all overregulation.

Fiscal realities notwithstanding, NSBA agrees that expanded athletic opportunities for students with disabilities may provide a worthwhile benefit to many students, both disabled and nondisabled. Many school districts in the nation are actively developing and implementing these types of opportunities, with allied and unified sports programs being among the most popular and beneficial. School districts implement these programs because they believe in their value, and because they are able to design them with local input and resources to meet the specific needs of their communities. NSBA reads the DCL as supportive of the benefits of programs like allied and unified sports. But, it is important for OCR to clarify formally that the DCL is not a mandate that school districts adopt these programs. Concerns persist in school districts about OCR's expectations and potential enforcement findings. NSBA fears that this legal uncertainty may slow the natural process in which school boards are addressing this need by implementing programs tailored to meet local interests.

²⁴ 20 U.S.C. § 1232a (2013) ("No provision of any applicable program shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, school, or school system, ..."); 20 U.S.C. § 3403(b) (2013) ("No provision of a program administered by the Secretary or by any other officer of the Department shall be construed to authorize the Secretary or any such officer to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, school, or school system, ... except to the extent authorized by law.").

²⁵ Beliefs & Policies, Art. III, § 3: NSBA supports the provision of adequate funding and efficient procedures for financing federal public education programs and urges Congress to: (a) eliminate the practice of imposing federal unfunded mandates on states and local education agencies;...

Beliefs & Policies, Art. III, § 5.1: The federal government, through the Department of Education, should support, promote, and advocate on behalf of public education at the national, state, and local levels. The Department of Education should: ... (f) provide safeguards against federal control of curricula in American schools;

Beliefs & Policies, Art. III, § 4: NSBA supports federal education policies that make the education of all children a national priority, while recognizing that education is primarily a state and local function for which the federal role should be one of support and assistance rather than direct regulation....

Beliefs & Policies, Art. III, § 4.2: NSBA opposes unfunded mandates imposed by federal laws and regulations....

See also Crocker v. Tennessee Sec. Sch. Athletic Ass'n, 735 F. Supp. 753, 755 (M.D. Tenn. 1990): "The Court found that although the [now-IDEA] *did not require* that the local and state educational agencies *affirmatively provide* extracurricular activities for handicapped students, it did prohibit discrimination against those students."

IV. Conclusion.

It is our hope that through NSBA's comments here, OCR recognizes and addresses some unintended legal and practical challenges arising from the DCL. First, the DCL puts forward an expansive view of the requirements of Section 504 for school districts regarding equal opportunities for participation by students with disabilities in extracurricular athletics, and increases the potential for exposure of school districts to liability. Second, the DCL may encourage litigation by plaintiffs' attorneys relying on similarly expansive views of the law and confusion on the appropriate enforcement standards to be used in investigating Section 504 cases related to the provision of equal opportunities for participation of students with disabilities in extracurricular athletics. Lastly, OCR, through its DCL, seems to overstep its federal statutory bounds regarding US Ed's ability to insert itself into a school district's authority to direct its own educational programs, particularly interscholastic athletics. To this final point, NSBA cautions OCR against the use of informal guidance such as a DCL in a way that expands the substance and applicability of federal law and rules administered by US Ed. Because the informal guidance practice utilized by OCR lacks the formal input of important stakeholders that is part and parcel of the formal rule-making process, US Ed is denying itself the opportunity to understand the needs of school districts in a way that can help the agency develop truly useful guidance to meet and implement the objectives of the law. NSBA urges OCR to reach out to school boards, school attorneys, administrators, educators and other school officials in addition to parents and students, in a collaborative spirit to identify realistic, workable solutions to implementation across the spectrum of laws and rules enforced by US Ed and OCR.

We appreciate the opportunity to comment on the DCL and reiterate NSBA's strong support for our common purpose to keep schools free from discrimination and the exclusion of any student, not just those with disabilities, who want the opportunity to participate in extracurricular athletics. We look forward to working with OCR to develop guidance and resources to help schools understand the requirements of the law in supporting such an environment, and, specifically, in responding effectively to the requests of students with disabilities in this area. We continue to be available to OCR and US Ed for consultation to provide the perspective of school boards and their counsel *before* issuance of guidance such as the latest DCL. NSBA stands ready to work in partnership with OCR on this and other issues of importance to our members, and to the nation's public school children.

Sincerely,



Francisco M. Negrón, Jr.
General Counsel
National School Boards Association