

Attorney's Corner

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Reports Cards and Transcripts for Students with Disabilities Attending Public Elementary and Secondary Schools

On October 17, 2008, the U.S. Department of Education, Office for Civil Rights, issued guidance to provide state and local education agencies with information concerning disclosure of disability on report cards and transcripts for students with disabilities attending public elementary and secondary schools.^[1] The Guidance provides OCR's current position on the topics covered, based upon its interpretation of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and its implementing regulation (34 C.F.R. Part 104) and Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131 et. seq.) and its implementing regulation (28 C.F.R. Part 35).^[2]

School districts would benefit from reviewing the Guidance as a whole and reviewing their Governing Board Policies, Administrative Regulations and Report Card and Transcript practices to ensure that they comport with OCR's guidance. By doing so, school districts will be in a much better position to prevent parent claims of unlawful discrimination and avoid spending significant amounts of time and money defending such claims. Set forth below are highlights of OCR's guidance.

Report Cards

Because report cards are intended to provide parents with information regarding their child's progress or level of achievement in specific classes, course content or curriculum, school districts may indicate that a student is receiving special education on their report card if the report card otherwise accomplishes its intended purpose.

A report card for a student with a disability may also distinguish between special education programs and services and general education curriculum classes through specific notations or the use of asterisks or other symbols, so long as: (a) The school district's report cards also distinguish between other types of classes, such as advanced placement, honors or remedial classes; and (b) The report card also provides an explanation of the student's progress that is as informative and effective as the explanation provided for students without disabilities.

A report card for a student with a disability who receives accommodations in general education curriculum classes may also include special notations, such as asterisks or other symbols denoting that fact, so long as the intent in including this information is to provide parents with information about their child's progress or level of achievement in specific classes, course content, curriculum, the IEP or the student's Section 504 plan.

According to OCR, the grades for students with disabilities appearing on their report cards may be based upon grade level standards. As OCR states, "Assigning grades (i.e., achievement or "letter" grades) for a child with a disability based on the student's grade level (i.e., year in-school) standards would not

be inconsistent with Section 504 or Title II." At the same time, OCR opines that school districts have discretion to decide how to establish standards to reflect the progress or level of achievement of students with disabilities who are taught using different course content or a modified or alternative curriculum. In this case, it would be up to the school district to determine the standards to be used to measure the student's progress or level of achievement.

Transcripts

While OCR seems to provide school districts with a fair amount of latitude relative to Report Cards, it is much more "protective" of student transcripts, because in OCR's view, transcripts are generally intended to inform postsecondary institutions or prospective employers of a student's academic credentials and achievements. According to OCR, information that a student has a disability or has received special education or related services does not constitute information about the student's academic credentials and achievement. While one could argue with OCR's view (given that elementary and middle school transcripts will likely never be seen by prospective employers or postsecondary institutions, and that knowledge that a student receives special education may provide information about the student's academic credentials and achievement), OCR's opinion will guide its investigation of any discrimination complaint made against a school district and findings it makes in such cases.

OCR specifically opines that student transcripts may not indicate that a student with a disability has been enrolled in a special education program or received special education and related services. OCR's rationale is that notations that are used exclusively to identify a student as having a disability or that identify education programs for students with disabilities unnecessarily provide these students with different educational benefits or services than non-disabled students, thereby violating Section 504 and Title II.

While a transcript may not disclose that a student has a disability or has received special education or related services as a result of a disability, OCR opines that it is permissible for a transcript to reflect that a student took classes with a modified or alternative education curriculum, either through specific notations or the use of asterisks or other symbols. According to OCR, transcript notations concerning enrollment in different classes, course content or curriculum by students with disabilities would be consistent with similar transcript designations for classes such as advanced placement, honors and basic remedial instruction, which are provided for both students with and without disabilities. However, the transcript cannot use notations, asterisks or other symbols that would specifically disclose that a student has a disability or to identify programs for students with disabilities.

According to OCR, a school district would be in violation of Section 504 and Title II if it issued transcripts that indicated that a student received accommodations in general education curriculum classes. OCR reasons that the use of accommodations does not typically reflect a student's academic credentials or achievement, but does identify the student as having a disability.

Finally, with respect to transcripts, OCR takes the view that a transcript for a student with a disability may indicate receipt of a certificate of attendance or a similar document, rather than a regular diploma if: (a) The document does not disclose that the student has received special education or related services; (b) The document is not used for the purpose of identifying programs for students with disabilities; and (c) The document is used to inform postsecondary institutions and prospective employers of a student's academic credential or achievements.

School districts may want to work with their own legal counsel to review and analyze their procedures regarding grading, report cards and transcripts, in order to ensure compliance with OCR's most recent Guidance. Parents have filed claims against school districts alleging discriminatory practices

in these areas, and school districts have been subject to extremely time consuming and expensive investigations as a result.

^[1] Dear Colleague Letter dated October 17, 2008 from Stephanie J. Monroe, Assistant Secretary for Civil Rights and enclosed "Questions and Answers on Report Cards and Transcripts for Students with Disabilities Attending Public Elementary and Secondary Schools". The Letter and Enclosure are available at OCR@ed.gov.

^[2] Section 504 of the Rehabilitation Act is a federal civil rights statute that prohibits discrimination on the basis of disability in programs or activities receiving Federal financial assistance. Title II of the Americans With Disabilities Act of 1990 prohibits discrimination on the basis of disability by public entities, including public elementary and secondary schools, regardless of receipt of Federal financial assistance. Both federal laws require school districts to provide a free appropriate public education to qualified individuals with disabilities in their jurisdiction. See, 34 C.F.R. 104.33 and 28 C.F.R. 35.103(a).

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