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**34 NDLR 48**

**106 LRP 61033**

**CALIFORNIA DEPARTMENT OF  
EDUCATION**

**Office for Civil Rights**

N/A

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**Related Index Numbers**

**10. AMERICANS WITH DISABILITIES ACT  
(ADA)**

**110.010 Office for Civil Rights (OCR)**

**405.055 In General**

**15.132 Public Entities, In General**

**Judge / Administrative Officer**

**MONROE**

**Case Summary**

In response to numerous inquiries regarding report cards and transcripts for students with disabilities, OCR provided some critical guidance on the types of information that districts can or should include in each document -- as well as which types of information to omit. OCR noted that Section 504, Title II and the IDEA do not specifically address report cards and transcripts. Nonetheless, OCR observed that the three statutes, when examined together, provided some key insights. Noting that report cards are provided to parents so that they can monitor a child's progress or level of achievement, OCR explained that Section 504 and Title II do not prohibit districts from identifying whether the student is receiving special education or related services -- so long as the information is presented in a manner that informs parents of the student's progress.

"Without more meaningful information, a report card that indicates only special education status provides the student with a disability with a benefit or service that is different from and not as effective as the benefit or service that is provided through the report card to students without disabilities," OCR

wrote.

As for transcripts, OCR pointed out that Section 504 and the ADA preclude districts from providing different services to students with disabilities unless such action is necessary to provide the education or services the student requires. Thus, while a transcript can indicate that a student took a class with a modified or alternative curriculum, it cannot state that the student received special education or related services.

**Full Text**

**Appearances:**

Ms. Mary Hudler

Assistant Superintendent

Director, Special Education

California Department of Education

1430 N Street

Sacramento, CA 95814-5901

Dear Ms. Hudler:

This letter is in response to letters written by Dr. Alice D. Parker, California's former State Director of Special Education, to the United States Department of Education concerning report cards and transcripts of children with disabilities. These letters were referred to the Department's Office for Civil Rights (OCR). In a March 29, 2006 letter to Stephanie Monroe, Assistant Secretary for Civil Rights in the United States Department of Education, you asked for assistance in obtaining responses to Dr. Parker's questions. Please excuse our delay in issuing this response.

It is our understanding that the report cards referenced in Dr. Parker's letters and your letter are those provided by local educational agencies (LEAs) to parents to indicate their child's progress or level of achievement in specific classes, course content, or curriculum. Our answers assume these report cards are made available to parents, not to postsecondary institutions, potential employers, and others outside the LEA. In contrast, it is our understanding that a

student's transcript generally is intended to inform postsecondary institutions or prospective employers of a student's academic credentials and achievements. Accordingly, there is an expectation that a student's transcript could be shared with persons other than the student and the student's parents.

The questions raised by your inquiry concern the requirements of Section 504 of the Rehabilitation Act of 1973 (Section 504), Title II of the Americans With Disabilities Act of 1990 (Title II), and Part B of the Individuals with Disabilities Education Act (IDEA). Section 504 prohibits discrimination on the basis of disability in programs or activities receiving Federal financial assistance. Title II prohibits discrimination on the basis of disability by public entities, including public elementary and secondary school systems, regardless of receipt of Federal financial assistance. As part of their disability nondiscrimination mandates, Section 504 and Title II require LEAs to provide a free appropriate public education (FAPE) to qualified individuals with disabilities in their jurisdiction. Section 504 and Title II do not have specific provisions addressing report cards or transcripts. In general, Section 504 and Title II prohibit recipients and public entities from treating persons differently on the basis of disability in the provision of aid, benefits, or services. See 34 C.F.R. § 104.4(b)(1)(i)-(iv) and 28 C.F.R. § 35.130(b)(1)(i)-(iv). However, it is permissible to provide a different aid, benefit, or service to persons with disabilities where necessary to provide an aid, benefit, or service that is as effective as that provided to others. *Id.* OCR enforces Section 504 and Title II.

IDEA is administered by the Department's Office of Special Education Programs (OSEP) in the Office of Special Education and Rehabilitative Services (OSERS). Since the requirements of IDEA are also relevant to your inquiry, OCR has consulted with OSEP in developing responses to your questions. Under IDEA, funding is provided to State educational agencies (SEAs), and through them to LEAs, to assist in making FAPE available, through the provision of special education and related services at no cost to the

parent, to eligible children with disabilities in mandatory age ranges. IDEA does not have specific provisions on report cards or transcripts, but does require that the Individualized Education Program (IEP) for a child with a disability include a description of how the child's progress toward meeting the annual goals set forth in his or her IEP will be measured and when periodic reports on the child's progress toward meeting the annual goals will be provided (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards). 20 U.S.C. 1414(d)(1)(A)(i)(III). These periodic progress reports may be separate from, or included as part of, the regular report cards of students with disabilities with an IEP. In general, the nondiscrimination principles of Section 504 and Title II would apply to report cards with or without such progress reports. You may contact OSEP directly if you require more specific information on IEP-related periodic progress reports.

1. Can a standards-based report card, or any report card issued for a child with a disability by a local educational agency, identify special education or other related services or resources being provided for the student? For example, can the report card provide a box to be checked if the student is receiving speech/language services, is in a resource program or special day class, or makes reference to an IEP?

As noted above, in general, Section 504 and Title II prohibit recipients and public entities from treating persons differently on the basis of disability in the provision of aid, benefits, or services. However, recipients and public entities may provide a different aid, benefit, or service to persons with disabilities where necessary to provide an aid, benefit, or service that is as effective as that provided to others. 34 C.F.R. § 104.4(b)(1)(i)-(iv) and 28 C.F.R. § 35.130(b)(1)(i)-(iv).

Given that report cards are provided to parents to indicate their child's progress or level of achievement in specific classes, course content, or curriculum, it would be permissible under Section 504 and Title II for a report card to indicate that a student is receiving

special education or related services, to the extent that this information is given as a way of informing parents about their child's progress or level of achievement in specific classes, course content, or curriculum, consistent with the underlying purpose of a report card.

However, in light of the purpose of report cards as referenced above, the mere designation that a student has an IEP or is receiving a related service, without any meaningful explanation of the student's progress, such as a grade or other evaluative standard established by an LEA and/or SEA, would be inconsistent with IDEA's periodic reporting requirements, as well as with Section 504 and Title II. Under Section 504 and Title II, the LEA must provide students with disabilities report cards that are as meaningful as the report cards provided to students without disabilities. Without more meaningful information, a report card that indicates only special education status provides the student with a disability with a benefit or service that is different from and not as effective as the benefit or service that is provided through the report card to students without disabilities.

2. Can a report card assign grades for a child with a disability based on the student's grade level standards?

Yes. 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. Generally, Section 504 and Title II would require that if an LEA assigns grades to nondisabled students participating in regular education classes using grade level standards to reflect progress in the general education curriculum, then the LEA would also assign grades to disabled students participating in regular education classes using grade level standards to reflect progress in the general education curriculum. To the extent that a disabled student is not participating in such classes and is being taught different course content or taught using a modified or alternate education curriculum for a portion of the

day, it would be up to the SEA and the LEA to establish standards to reflect progress or level of achievement for this different course content or modified or alternate education curriculum. The grades on a disabled student's report card for classes with a different course content and classes taught using a modified or alternate education curriculum would be based on these standards.

3. May a local educational agency distinguish between special education programs and services and general curriculum classes on the report card of a student who has an IEP?

In general, under Section 504 and Title II, an LEA may distinguish between special education programs and services and general education curriculum classes on the report card of a student who has an IEP if the course content or curriculum in the special education programs or services is different from the course content or curriculum contained in the general education curriculum classes. LEAs frequently distinguish between general education curriculum classes and other types of programs and classes, such as advanced placement, honors, or remedial classes. Making similar distinctions on report cards would be consistent with the general requirements of Section 504 and Title II that individuals with disabilities not be treated differently than individuals without disabilities.

4. May a local educational agency use asterisks or other symbols or coding on a report card of a child with a disability to indicate that the student has had a modified curriculum in general education?

As noted in the response to question #3 above, an LEA may, under certain circumstances, distinguish on the report card between students in general education curriculum classes and those taught using a modified or alternate curriculum. The use of asterisks, symbols, or other coding on a report card to designate the use of a modified education curriculum generally would be allowable under those circumstances.

5. Can a student's transcript indicate that the student has been enrolled in a special education

program, has received special education and/or related services, or has a disability?

No. As noted above, a student's transcript generally is intended to inform postsecondary institutions or prospective employers of a student's academic credentials and achievements. Information that a student has received special education or related services or has a disability does not constitute information about the student's academic achievements. Under Section 504 and Title II, recipients and public entities may not provide different or separate aid, benefits, or services to individuals with disabilities, or to any class of individuals with disabilities, unless such action is necessary to provide those individuals with aid, benefits, or services that are as effective as those provided to others. Notations that are used exclusively to identify programs for students with disabilities unnecessarily provide these students with different educational benefits or services. In addition, identifying programs as being only for students with disabilities singles out students with disabilities with respect to disclosure of disability and constitutes different treatment on the basis of disability. Therefore, it would be a violation of Section 504 and Title II for a student's transcript to indicate that a student has received special education or a related service or that the student has a disability.

While a transcript may not disclose that a student has received special education or a related service or has a disability, a transcript may indicate that a student took classes with a modified or alternate education curriculum. This is consistent with the transcript's purpose of informing postsecondary institutions and prospective employers of a student's academic achievements. Transcript notations concerning enrollment in different classes, course content, or curriculum by students with disabilities would be consistent with any similar transcript designation for classes, such as advanced placement, honors, or remedial instruction, in which students without disabilities are enrolled, and thus would not violate Section 504 or Title II. These notations about

modified or alternate education curriculum are permissible because they do not disclose that a student has a disability, are not used exclusively to identify programs for students with disabilities, and are consistent with the purpose of a student transcript.

6. Can special notations, such as asterisks or other symbols, be included on the transcript of a child with a disability who receives accommodations in general education classrooms or who has had a modified curriculum in general education?

Consistent with the response to question #5, under Section 504 and Title II, a student's transcript may, under certain circumstances, indicate that the student was taught using a modified curriculum in general education curriculum classes. However, in general, it would be a violation of Section 504 and Title II for a student's transcript to indicate that the student has received accommodations in a general education classroom since accommodations are generally understood to include aids or adjustments that enable the student with a disability to learn and demonstrate what the student knows and do not affect course content or curriculum.

7. Is the confidentiality standard different for a student's report card and a student's transcript?

Section 504 and Title II do not contain specific confidentiality requirements in this context, but do prohibit different treatment on the basis of disability, including with respect to the inclusion on transcripts of information about disability. Because report cards and transcripts have different purposes and bestow different benefits, the analysis under Section 504 and Title II for each must be individually tailored. However, please note that disclosures of student information are subject to the consent requirements contained in the Family Educational Rights and Privacy Act (FERPA) and the IDEA that apply to public agencies in disclosing personally identifiable information in education records. See 34 C.F.R. §§ 99.30-99.31 of the FERPA regulations and 34 C.F.R. § 300.571 of the IDEA regulations.' With regard to disclosure to third parties, the same confidentiality requirements apply both to a student report card and a

student transcript, since both are "education records" within the meaning of FERPA and IDEA.

We hope that you find the above explanation helpful. If you would like further assistance, please contact Shelley Jackson of my staff, at 202-245-6839. Again, please accept my apologies for the delay in providing a response.

### **Regulations Cited**

34 CFR 104.4(b)(1)(i)  
34 CFR 104.4(b)(1)(ii)  
34 CFR 104.4(b)(1)(iii)  
34 CFR 104.4(b)(1)(iv)  
28 CFR 35.130(b)(1)(i)  
28 CFR 35.130(b)(1)(ii)  
28 CFR 35.130(b)(1)(iii)  
28 CFR 35.130(b)(1)(iv)  
34 CFR 300.571