

# COURSEWORK, CREDITS, PROMOTIONS, AND GRADUATION CEREMONIES FOR STUDENTS WITH DISABILITIES

*Technical Assistance Document*



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## **INTRODUCTION**

The Nevada Department of Education (NDE) has recently been asked a series of questions concerning students with disabilities and several topics of interest to school districts, parents, and students. Specifically, questions were posed regarding access to coursework, credit for coursework, and participation in graduation ceremonies. The Department's responses to these questions have implications for district policy and procedure within the legal requirements of the Nevada Revised Statutes (NRS), the Nevada Administrative Code (NAC), the Individuals with Disabilities Education Act (IDEA), and Section 504 of the Rehabilitation Act of 1973. The questions and the Department's responses are presented below for your review and consideration. We encourage you to examine your district's policies and procedures, as well decision-making within schools, to ensure that careful and equitable decisions are made, in compliance with applicable requirements. Careful planning and clear communication regarding coursework, grading, and credits can lead to positive experiences and successful outcomes for students with disabilities in secondary schools.

## **COURSEWORK, CREDITS, PROMOTIONS, AND GRADUATION CEREMONIES FOR STUDENTS WITH DISABILITIES**

### **Access to Coursework**

- 1. Can a school district limit access to community-based instruction to only those students with disabilities who have mental retardation or other significant disabilities?**
- 2. If a student with a disability takes some academic classes, is participation in community-based instruction precluded?**
- 3. Can students with disabilities participate in tutoring classes offered for students having difficulty passing the high school proficiency examination?**
- 4. Can students with disabilities participate in the "fifth-year senior" option offered to general education students who have not passed the high school proficiency examination?**

In general, denial of a benefit or program participation on the sole basis of disability constitutes illegal discrimination under Section 504 of the Rehabilitation Act of 1973 ("Section 504"). Therefore, policies, procedures, and decisions that arbitrarily limit the access of students of disabilities to classes, programs, status designation (e.g., "fifth-year senior"), or other educational opportunities based upon disability, or upon the existence of a particular disability, violate Section 504. Decisions regarding the participation of students with disabilities in, for example, community-based instruction or in tutoring programs must be individualized and based upon the unique needs of the student. Arbitrary decisions (e.g., "only students with mental retardation may participate in community-based instruction"; or "if the student takes academic classes, he/she cannot participate in community-based instruction") are likely to be found discriminatory by the U.S. Office for Civil Rights (OCR). If a given program or offering has established eligibility criteria for participation, then students with disabilities who are "otherwise qualified" (i.e., students who meet the eligibility criteria with or without reasonable accommodations) must be allowed to participate on the same basis as students who are not disabled.

### **Course Credit**

- 1. Can a school district refuse to give any credit at all for participation in special education classes?**
- 2. What criteria do school districts use to determine what kind of credit will be given for students with disabilities participating in general or special education classes?**
- 3. Can the criteria vary from school to school? Even if the criteria are established at the school district level, can the application of criteria vary from school to school?**

State regulations define "unit of credit" as "an amount of credit which is awarded to a pupil for his successful completion of a course containing at least 120 hours of instruction or the equivalent." (NAC 389.040). Neither IDEA nor Section 504 specifically addresses the issues of grades or credits; therefore, standards for determining successful completion (i.e., "grading") and awarding credit for coursework are established at the local school district level, within the framework of individualized, nondiscriminatory decision-making.

In order to avoid acting in a discriminatory manner, school districts must be able to articulate the educational rationale and criteria used for awarding credit, and criteria must be applied consistently from school to school. Classes may be taken for no credit as part of a student's individualized educational program (IEP), and may be graded based upon criteria outlined in the particular student's IEP. (*Letter to*

*Runkel*, 25 IDELR 387). A class may be taken for no credit as part of a student's IEP (e.g., a course where students who are not disabled also do not receive credit).

In the design of courses for students with disabilities, attention should be given to aligning content to the general curriculum so that general education credit will be awarded whenever appropriate to reflect students' accomplishments. The IDEA regulations focus on access to general curriculum for students with disabilities in several key areas. For example, IEPs must include measurable annual goals that meet "the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum." (34 CFR 300.347(a)(2)). Further, IEPs must describe the special education, related services, and supplementary aids and services for the student "to be involved and progress in the general curriculum" (34 CFR 300.347(a)(3)).

Generally, different grading systems for students with disabilities who participate in the general curriculum are only permitted if the student's IEP committee adopts a different scheme in response to the student's individual needs. OCR offered the following analysis in a 1991 investigation concerning the coding of grades to indicate situations where coursework was modified in conjunction with a special education program for students with disabilities:

The district has the authority to establish course and grade requirements, and the district [in question] has developed grading standards for handicapped students, who are enrolled in regular classes, that must be met in order for the student to receive a regular grade versus a grade coded as special education. Evidence shows that the grading standards are not discriminatory against LD students because they are provided notice of the course/grade requirements and have the option of earning a regular grade, if desired. Furthermore, when needed, LD students enrolled in regular courses are provided course modifications, to the maximum extent possible to meet their individual needs, in order to provide them the opportunity to earn regular grades." (*Metropolitan (TN) Pub. Sch. Dist.* 18 IDELR 971)

In a 1995 investigation regarding a school district that had adopted a system for assigning lower or different grade weights to special education courses, OCR analyzed several factors related to the district's system (*North East (TX) Independent School District*, 24 IDELR 298):

- whether a student's placement in "special," "basic," "regular," or "honors" classes was individually determined through an IEP process
- whether the district could articulate a legitimate educational reason for not awarding academic credit for the "basic" and "special education" classes equivalent to the academic credit given for "regular" classes in the same subject matter
- whether there were significant differences in methods of instruction and quantity of material between the classes
- whether all students with disabilities were placed in "basic" and "special education" classes, or whether some students with disabilities were placed in "regular" or "honors" classes

**4. Should IEPs reflect the kind and amount of credits students will earn for participation and progress in courses?**

Although IDEA regulations do not specifically require that IEPs reflect the kind and amount of credits students will earn, it may be appropriate to consider these matters when describing how students' progress will be measured and reported. IDEA requires that IEP goals be measurable and that the IEP include:

34 CFR §300.347(a)(7) A statement of—

- (i) How the child's progress toward the annual goals . . . will be measured; and
- (ii) How the child's parents will be regularly informed (through such means as period report cards), at least as often as parents are informed of their nondisabled children's progress, of
  - (A) their child's progress toward the annual goals; and
  - (B) the extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year.

Thus, to the extent that progress will be measured or reported based upon grades earned for credit, the IEP should reflect the decisions of the committee.

**5. If a course offered in a special education class contains the same or similar content and performance standards as a comparable general education class, can the course be named or identified in a way that might result in a college or university refusing to accept it?**

If a student is held to the same standards for content mastery as are students without disabilities, then it would be expected that the student would earn equivalent credit, regardless of the setting where instruction occurs. This would be true even if reasonable accommodations are necessary for the student to demonstrate his/her mastery of the content. In situations where students with disabilities are held to the same standards as students who are not disabled, it would be inappropriate to describe the special education classes in such a way as to discount their value in a transcript review. As OCR stated in 1996: "As a general observation, it would be suspect if a school district discounted special education courses or otherwise depreciated special education course grades on a categorical basis." (*Letter to Runkel*, 25 IDELR 387).

Extreme care should be taken when describing courses on a student's transcript. OCR offers the following guidance for instances when the standards for the student's performance have been modified, and the student has not been held to the same standards as students without disabilities (*Letter to Runkel*, 25 IDELR 387):

*May classes be identified as special education classes on the high school student's transcript to indicate that the student has had a modified curriculum in general class?*

This is an emphatic no . . . . However, we must point out that there is yet no definitive standards enunciated in any court or OCR decision to indicate exactly what terms are permissible to use and what are not.

. . . It is much better to use terms such as "basic, level 1, practical," etc., as opposed to "special education." The former may be terms also applicable to remedial courses taken by persons without disabilities for a variety of reasons. This will always be a factual determination made in each individual set of circumstances.

Other examples of permissible transcript "labeling" or designations used may include "I.S. [independent study]" or "modified curriculum," if these terms are also used in other courses besides special education, such as the gifted and talented program.

Examples of transcript labels that should be carefully reviewed are "L.C. [learning center]," "H.B. [homebound instruction]," "resource room," "P.E. requirement waived--medical," "PF [peer facilitator used]," or "S.O.S. (special opportunity school)." We understand that these terms are often used on transcripts of "at risk" students who may not have disabilities, or at least have not been identified as such.

To summarize, if the course designation suggests that it only is used in special education programs involving students with disabilities covered by Section 504 or Title II, it may be a violation. If it has a more general connotation, it may not be violative. The response to this question may largely depend on regional as well as state-wide usage practices.

*May asterisks or other symbols or codes be written on a high school student transcript to indicate that the student has had a modified curriculum in a general education?*

The . . . [statements] that modifications or exceptions to the grading scale may be identified on the academic transcript as long as grades and courses of all students, and not just students with disabilities, are similarly treated is generally correct. For example, if the modification code system covers enhanced or greater difficulty course-work completed by gifted and talented program students as well as students taking remedial courses, it may not necessarily violate Section 504 or Title II to also include special education courses. The key will be to determine if the modification identification tends to focus on students with disabilities as a category. If it does, it strongly suggests that it may be prohibited under Section 504 or Title II.

Further, since academic transcripts should not be released to prospective employers or postsecondary educational institutions without the permission of the student, the school district should take steps to notify each student of what his or her academic transcript contains in the way of such modification notations, if any, before releasing it to another party.

**6. Can a district refuse to give credit for participation in ESY, even when the participation in ESY is related to credit deficiency? Students could earn credit in the "regular" summer school program, except that no special education support is available in those settings.**

Distinctions between summer school and extended school year (ESY) services often become confused. ESY is not simply "summer school for students with disabilities," although some or all of a given student's ESY services could be provided within a general education summer school program. Likewise, some students with disabilities may participate in summer school, without having demonstrated any need for ESY services. A reviewing authority would probably look unfavorably on a district that refused to offer reasonable accommodations necessary for students to participate in summer school, and then also refused to offer course credit for ESY for the very students the district refused to accommodate in its summer school programs.

**Promotions**

**1. When no course credit is given for students who participate and progress in special education classes, the students are sometimes being assigned to the grade that corresponds to the amount of credit they have earned. This practice impacts the classes they are permitted to take, where they appear in the yearbook, grade-related activities, and can result in a student being kept for more than two years in the same grade. Does this practice conform to state and federal requirements?**

Following is a discussion of state statutes and regulations related to promotion from 8th grade to high school, and related to advancement from 9th through 12th grades.

### Promotion from 8th Grade to High School

The 1997 Legislature enacted NRS 392.033 directing the State Board of Education to adopt regulations prescribing the courses of study and credits required for promotion to high school. (NRS 392.033(1)). The statute further states that local school districts cannot promote a student from 8th grade to high school if the student does not complete the course of study or credits required for promotion. (NRS 392.033(2)). It was subsequently suggested that this statute conflicted with NRS 392.125, which states that a pupil may not be retained more than one time in the same grade. This apparent conflict was resolved by Nevada Attorney General Opinion (AGO) No. 99-29. The AGO states that because NRS 392.033 is a more recent statute, it prevails over NRS 392.125. Thus, a student who has not completed the course of study or credits required for promotion to high school may be retained in the eighth grade more than once. The AGO makes clear that "the requirement of NRS 392.125 that a pupil may be retained in a grade only one time is applicable to all other grades."

The requirements for promotion from 8th grade to high school, including course of study and credit requirements, are contained in NAC 389.445. Significantly, NAC 389.445(5) states that "a pupil with a disability who is enrolled in a program of special education may be promoted to high school if he meets the requirements for promotion to high school that are prescribed in his individualized educational program." Thus, IEP committees have the authority, in appropriate circumstances, to prescribe the requirements for promotion of a student with a disability to high school, in a way that is different from the credit and course of study requirements otherwise specified in NAC 389.445.

### Units Required for Promotion to Next Higher Grade Level

NAC 389.659 contains the requirement for earning units in order to advance to 10th, 11th, and 12th grades in high school.

1. If a pupil enrolls in the 9th grade during or after the 1999-2000 school year:
  - (a) Except as otherwise provided in subsection 2, the pupil must earn a minimum of:
    - (1) Five units of credit to be promoted to the 10th grade.
    - (2) Eleven units of credit to be promoted to the 11th grade.
    - (3) Seventeen units of credit to be promoted to the 12th grade.
  - (b) A school district shall evaluate the transcripts of the pupil if he transferred to a high school within the school district from another high school located outside the school district, whether located inside or outside this state, to determine the grade level for which the pupil qualifies pursuant to paragraph (a).
  - (c) Except as otherwise provided in subsection 2, the pupil shall be deemed deficient in credit if, after completing a year of high school, he failed to earn at least the number of units of credit required pursuant to paragraph (a) to be promoted to the next higher grade level.
2. The superintendent of a local school district may waive the requirement set forth in:
  - (a) Subparagraph (1) of paragraph (a) of subsection 1 if:
    - (1) The local school district is a school district in which the 9th grade is taught in a junior high or middle school; and
    - (2) He determines that extenuating circumstances exist; and
  - (b) Subparagraph (3) of paragraph (a) of subsection 1 if he determines that extenuating circumstances exist.

Unlike the regulation concerning promotion from 8th grade to high school, no explicit provision is made for IEP committees to alter the requirements for numbers of credits required for promotion from 9th through 12th grades. Hence, it is important for IEP committees to address directly the kind and amount of credit students with disabilities are expected to earn as they attend high school. Unless careful consideration is given to these issues, a series of unintentional consequences may arise concerning such matters as the "grade" in which the student appears in the yearbook and whether the student is permitted to participate in grade-related activities (e.g., participation in the "Senior" trip).

Also, as described above, a student may be retained only one time in each grade from 9th through 12th (NRS 392.125). Students with disabilities, just like other students, can fail to complete the requirements necessary to earn credits (including requirements that are individualized within students' IEPs). Therefore, there may be occasions when students with disabilities are not promoted, but this situation should not arise simply because IEP committees failed to carefully address the kind and amount of credits students will earn. It is also important for the students' IEP committees to thoughtfully consider and describe explicitly any accommodations for how the students will be graded on class work, homework, projects, or tests, if the student is being held to a different standard than general education students. Finally, administrators must ensure that teachers are aware of and carry out their responsibilities as described in students' IEPs.

### **Graduation Ceremonies**

- 1. Who decides whether students receiving adjusted diplomas or certificates of attendance can participate in graduation ceremonies?<sup>1</sup>**
- 2. What if the school principal decides that some, but not all, students receiving adjusted diplomas can participate in graduation ceremonies?**
- 3. Can the IEP committee decide whether the student can participate in graduation ceremonies, and write the provision in the IEP?**
- 4. Can the IEP committee write in the IEP the provisions needed to assist a student to participate in graduation ceremonies (e.g., the need for a ramp so a student can access the stage to receive a diploma, as opposed to receiving the diploma at floor-level)?**

As stated in the NDE memorandum to local school district special education administrators on April 18, 2000, "local policy governs decisions about the participation of students in graduation ceremonies. However, districts cannot discriminate against students with disabilities in setting the policies (e.g., by not permitting a student with a disability to participate when the district would permit a similarly situated student without a disability to participate)." At least one legal authority, based upon review of OCR decisions and advisement, has stated:

No matter what type of diploma a student with a disability will be receiving, he has the right to participate in the same graduation ceremony as the students in his school who are receiving regular high school diplomas. In technical terms, a student with a disability who meets his state's requirement for graduation from secondary school is "qualified" to participate in the same graduation ceremony he would participate in if he did not have a disability. Excluding a qualified person with a disability from participation is unlawful discrimination. (Susan Gorn. 2000. The Answer Book on Students with Disabilities: Testing, Grading, and Graduating Students with Disabilities. LRP Publications, Horsham, PA).

Clearly, school districts must adopt and implement nondiscriminatory policies and/or procedures regarding participation in graduation ceremonies. Policies adopted at the district level must be consistently applied across schools within the district. A school district could opt to permit IEP committees to make decisions about participation in graduation ceremonies; however, neither state nor federal law entitles IEP committees to make these decisions or to override district-level policy through the IEP process. At least one due process hearing review panel has ruled that there is no general right in

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<sup>1</sup> As this document was being finalized, the 2003 Nevada State Legislature was considering a bill regarding the awarding of adjusted diplomas to students with disabilities. In the future, the advisement in this document must be considered in light of any changes made by the 2003 Legislature.

IDEA for a student to participate in graduation ceremonies without having met graduation requirements. (*Woodland Hills School District*, 30 IDELR 927).

Several provisions within IDEA ensure that eligible students with disabilities be given equal opportunities to participate in nonacademic/extracurricular services and activities, and graduation ceremonies have sometimes been characterized as such. Thus, if a student meets the district's requirements for participating in graduation ceremonies, an IEP may contain "a statement of the . . . supplementary aids and services to be provided to the child, or on behalf of the child . . . to participate in extracurricular and other nonacademic activities" (34 CFR 300.347(a)(3)). Supplementary aids and services include "aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with §§ 300.550—300.556." 34 CFR § 300.553 requires that school districts "ensure that each child with a disability participates with nondisabled children in [nonacademic and extracurricular] services and activities to the maximum extent appropriate to the needs of the child." 34 CFR § 300.306 states that "each public agency shall take steps to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities."

- 5. If a student with a disability participates in a "graduation" ceremony (but receives an adjusted diploma or certificate of attendance), can the student return to school to continue receiving services?**
- 6. Can a student participate in graduation ceremonies if the student is receiving an adjusted diploma or a certificate of attendance, but is planning to return to school to continue receiving services?**
- 7. Can a school refuse to allow a student to participate in graduation ceremonies if school officials are aware that the student plans to continue receiving services?**

Technically, participation in graduation ceremonies should be seen as an activity distinct from graduation through receipt of a diploma. As stated in the NDE memorandum to local school district special education administrators on April 18, 2000, "if a student exits special education under any circumstance other than receiving a standard diploma or reaching the age of 22, the district has a continuing obligation to make a free appropriate education (FAPE) available." Federal regulations state:

34 CFR § 300.122. (a) The obligation to make FAPE available to all children with disabilities does not apply with respect to the following . . . (3)(i) Students with disabilities who have graduated from high school with a regular high school diploma. (ii) The exception in paragraph (a)(3)(i) of this section does not apply to students who have graduated but have not been awarded a regular high school diploma.

This means that if a student with a disability receives an adjusted diploma or a certificate of attendance prior to age 22, the student continues to have a right to FAPE until age 22. Participation in a graduation ceremony does not end a student's right to FAPE—only the receipt of a regular high school diploma (or attaining the age of 22) terminates an eligible student's right to FAPE.

As stated above, local policy, applied consistently and in a nondiscriminatory manner, controls who may participate in a graduation ceremony. For example, school districts may adopt a policy that does not permit a student to "walk" with classmates without having satisfied the requirements for receipt of a diploma. (Note that since a certificate of attendance is not a "diploma" under state law, a school district could refuse to permit students receiving certificates of attendance to participate in graduation ceremonies.) When this policy exists, students with disabilities sometimes elect to receive an adjusted diploma as a way to participate in the ceremony, even though the student already plans to continue to

receive services under the district's obligation to continue to make FAPE available. Under these circumstances, the student who will receive an adjusted diploma must have an equal opportunity to participate in the ceremony, even though the district may be aware that the student intends to continue receiving services.