

CHAPTER 464

(Senate Bill 849)

AN ACT concerning

Fitness and Athletics Equity for Students with Disabilities Act

FOR the purpose of requiring county ~~school systems~~ boards of education to ensure ~~the participation of that~~ that students with disabilities have certain opportunities in certain physical education and certain athletic programs; providing for certain exceptions to these requirements under certain circumstances; requiring county ~~school systems~~ boards to provide certain accommodations; requiring county ~~school systems~~ boards to develop certain ~~programs,~~ policies, and procedures; requiring county ~~school systems~~ boards to provide opportunities meeting certain criteria to students; ~~requiring county school systems to designate a certain employee to handle certain duties and responsibilities; requiring each county school system to provide notice of certain information to certain individuals; requiring each county school system to adopt and publish grievance procedures meeting certain criteria;~~ requiring the State Board of Education to adopt a certain model policy to assist certain county boards; requiring the State Department of Education to monitor compliance by county ~~school systems~~ boards with certain requirements; authorizing the Department to investigate and take or require certain action in response to certain complaints; ~~authorizing the Department to make certain determinations; authorizing the State Board of Education to take certain actions;~~ requiring county ~~school systems~~ boards and the Department to provide certain reports; requiring the Department to adopt certain regulations; ~~clarifying the availability of certain legal remedies; providing for the availability of certain legal action for noncompliance with certain provisions providing for the enforcement of certain provisions; authorizing a court to award attorney's fees;~~ defining certain terms; providing for a deadline for ~~local school system~~ compliance with certain provisions; providing for the construction of this Act; and generally relating to access to physical education and athletic programs in public schools by students with disabilities.

BY adding to

Article – Education

Section 7-4B-01 through ~~7-4B-07~~ 7-4B-06 to be under the new subtitle
 “Subtitle 4B. Physical Education and Athletic Programs for Students
 with Disabilities”

Annotated Code of Maryland

(2006 Replacement Volume and 2007 Supplement)

Preamble

WHEREAS, The Rehabilitation Act of 1973 provides that exclusion and segregation of individuals with disabilities by recipients of federal funds is prohibited discrimination; and

WHEREAS, The Americans with Disabilities Act, signed into law in 1990, provides that no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity; and

WHEREAS, Maryland public schools offer a variety of physical education and athletic opportunities to students that provide numerous educational benefits, including greater academic success, better physical and psychological health, responsible social behaviors, and enhanced interpersonal skills; and

WHEREAS, Sports participation is an effective intervention in combating obesity; and

WHEREAS, The aforementioned benefits and opportunities are particularly significant for students with disabilities; and

WHEREAS, Approximately 56 million people in the United States have documented disabilities; and

WHEREAS, Studies indicate that 56% of people with disabilities do not engage in any physical activity, compared to 36% of people without disabilities, and only 23% of people with disabilities are active for 30 minutes three or more times per week; and

WHEREAS, Childhood obesity is a national health concern, and physical activity can help prevent secondary health problems related to disabilities; and

WHEREAS, Students with disabilities have historically been underserved by school physical education and physical activity programs, such as athletics; and

WHEREAS, Including students with disabilities in mainstream physical education and athletic programs and adapted programs can provide students with disabilities with the opportunity to realize the full benefits of such programs; now, therefore,

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Education

SUBTITLE 4B. PHYSICAL EDUCATION AND ATHLETIC PROGRAMS FOR STUDENTS WITH DISABILITIES.

7-4B-01.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) “ADAPTED PROGRAM” MEANS A PROGRAM THAT IS ~~SPECIFICALLY~~ DEVELOPED FOR A STUDENT WITH A DISABILITY.

(C) “ALLIED SPORTS OR UNIFIED PROGRAM” MEANS A PROGRAM THAT IS SPECIFICALLY DESIGNED TO COMBINE GROUPS OF STUDENTS WITH AND WITHOUT DISABILITIES TOGETHER IN PHYSICAL ACTIVITY.

(D) “MAINSTREAM ATHLETIC PROGRAM” MEANS INTRAMURAL OR INTERSCHOLASTIC ATHLETIC ACTIVITY THAT IS DEVELOPED AND OFFERED TO STUDENTS IN ACCORDANCE WITH CRITERIA ESTABLISHED BY THE STATE BOARD.

~~(D)~~ (E) “MAINSTREAM PHYSICAL EDUCATION AND ATHLETIC PROGRAM” MEANS A SCHOOL-BASED ACTIVITY PHYSICAL EDUCATION PROGRAM THAT IS DEVELOPED AND OFFERED TO ALL STUDENTS IN ACCORDANCE WITH CRITERIA ESTABLISHED BY THE STATE BOARD.

~~(E) “PHYSICAL EDUCATION AND ATHLETIC PROGRAM” MEANS A PHYSICAL EDUCATION OR ATHLETIC ACTIVITY HELD ON THE PREMISES OF OR SPONSORED BY A PUBLIC SCHOOL.~~

(F) “STUDENT WITH A DISABILITY” MEANS A STUDENT WHO MEETS THE DEFINITION OF A “HANDICAPPED PERSON” AS DEFINED IN 45 C.F.R. § 84.3(J).

7-4B-02.

(A) ~~THE~~ SUBJECT TO SUBSECTION (B) OF THIS SECTION, THE DEPARTMENT STATE BOARD AND EACH COUNTY SCHOOL SYSTEM BOARD SHALL:

~~(1) ENSURE THE PARTICIPATION OF STUDENTS WITH DISABILITIES INTO PHYSICAL EDUCATION AND ATHLETIC PROGRAMS FOR STUDENTS WITHOUT DISABILITIES TO THE MAXIMUM EXTENT POSSIBLE;~~

(1) ENSURE THAT STUDENTS WITH DISABILITIES HAVE AN EQUAL OPPORTUNITY TO:

(I) PARTICIPATE IN MAINSTREAM PHYSICAL EDUCATION PROGRAMS; AND

(II) TRY OUT FOR AND, IF SELECTED, PARTICIPATE IN MAINSTREAM ATHLETIC PROGRAMS;

(2) ENSURE THE PROVISION OF REASONABLE ACCOMMODATIONS NECESSARY TO PROVIDE STUDENTS WITH DISABILITIES EQUAL OPPORTUNITY TO PARTICIPATE, TO THE FULLEST EXTENT POSSIBLE, IN MAINSTREAM PHYSICAL EDUCATION AND MAINSTREAM ATHLETIC PROGRAMS; AND

(3) ENSURE THAT ADAPTED, ALLIED, OR UNIFIED PHYSICAL EDUCATION AND ATHLETIC PROGRAMS ~~FOR STUDENTS WITH DISABILITIES ARE DEVELOPED TO PROVIDE STUDENTS WITH DISABILITIES WITH A PHYSICAL EDUCATION OR ATHLETIC PROGRAM THAT IS AS EFFECTIVE AS PROGRAMS PROVIDED TO STUDENTS WITHOUT DISABILITIES~~ ARE AVAILABLE.

(B) AN EXCEPTION TO THE ~~REQUIREMENT~~ REQUIREMENTS UNDER SUBSECTION ~~(A)(1)~~ (A) OF THIS SECTION MAY BE MADE WHEN THE INCLUSION OF A STUDENT:

(1) PRESENTS AN OBJECTIVE SAFETY RISK TO THE STUDENT OR TO OTHERS, BASED ON AN INDIVIDUALIZED ASSESSMENT OF THE STUDENT; OR

(2) FUNDAMENTALLY ALTERS THE NATURE OF THE SCHOOL'S MAINSTREAM PHYSICAL EDUCATION OR MAINSTREAM ATHLETIC ~~ATHLETIC OR PHYSICAL EDUCATION~~ PROGRAM.

~~(C) (1) A COUNTY SCHOOL SYSTEM SHALL CONSIDER DEVELOPING SINGLE-SEX COMPETITIVE TEAMS FOR STUDENTS WITH DISABILITIES IN PUBLIC SECONDARY SCHOOLS.~~

~~(2) A PROGRAM DEVELOPED UNDER THIS SUBSECTION SHALL CONSIDER THE INTERESTS OF THE STUDENTS FOR WHOM THE PROGRAMS ARE BEING DEVELOPED AND THE INTERESTS OF THE SCHOOL SYSTEM IN DEVELOPING A SPECTRUM OF ATHLETIC EXPERIENCES TO STUDENTS.~~

~~(3) COUNTY SCHOOL SYSTEMS SHALL:~~

~~(i) ENCOURAGE FEMALE STUDENTS WITH DISABILITIES TO PARTICIPATE IN ADAPTED PROGRAMS; AND~~

~~(H) ENSURE THAT FEMALE STUDENTS WITH DISABILITIES ARE ADEQUATELY REPRESENTED IN ADAPTED PROGRAMS.~~

~~(4) A COUNTY SCHOOL SYSTEM MAY INCLUDE STUDENTS OF BOTH SEXES IN A PROGRAM DEVELOPED UNDER THIS SUBSECTION IF THE SCHOOL SYSTEM CAN DEMONSTRATE THAT THE PROGRAM HAS BEEN DEVELOPED TO PROVIDE EQUAL OPPORTUNITIES TO BOTH SEXES AND THE SCHOOL SYSTEM HAS CONSIDERED THE SYSTEM'S CAPACITY TO PROVIDE SINGLE SEX COMPETITIVE TEAMS.~~

~~(D)~~ (C) THE PROVISION OF ADAPTED, ALLIED, OR UNIFIED PROGRAMS FOR STUDENTS WITH DISABILITIES DOES NOT MITIGATE THE DUTY OF A COUNTY SCHOOL SYSTEM BOARD TO PROVIDE AN INDIVIDUAL STUDENT WITH A DISABILITY AN EQUAL OPPORTUNITY TO BE FULLY INCLUDED IN MAINSTREAM PHYSICAL EDUCATION AND MAINSTREAM ATHLETIC PROGRAMS AVAILABLE TO STUDENTS WITHOUT DISABILITIES.

7-4B-03.

(A) A COUNTY SCHOOL SYSTEM BOARD SHALL:

(1) DEVELOP POLICIES AND PROCEDURES TO PROMOTE AND PROTECT THE INCLUSION OF STUDENTS WITH DISABILITIES INTO MAINSTREAM PHYSICAL EDUCATION AND MAINSTREAM ATHLETIC PROGRAMS; AND

(2) PROVIDE THE OPPORTUNITY FOR STUDENTS WITH ~~AND WITHOUT~~ DISABILITIES TO PARTICIPATE IN EXTRACURRICULAR OR INTERSCHOLASTIC COMPETITION, AS DEMONSTRATED BY:

(I) EQUIVALENT OPPORTUNITIES FOR PARTICIPATION IN EXTRACURRICULAR OR INTERSCHOLASTIC ATHLETIC PROGRAMS ~~FOR STUDENTS WITH DISABILITIES AND STUDENTS WITHOUT DISABILITIES IN NUMBERS SUBSTANTIALLY PROPORTIONATE TO THEIR RESPECTIVE ENROLLMENTS; AND; OR~~

(II) EVIDENCE INDICATING THAT THE INTERESTS AND ABILITIES OF STUDENTS WITH DISABILITIES HAVE BEEN FULLY AND EFFECTIVELY ACCOMMODATED BY THE ~~SCHOOL SYSTEM'S~~ COUNTY BOARD'S IMPLEMENTED PROGRAMS; ~~AND.~~

(B) THE STATE BOARD SHALL ADOPT A MODEL POLICY TO ASSIST A COUNTY BOARD WITH THE IMPLEMENTATION OF THIS SECTION.

~~(3) PROVIDE STUDENTS WITH DISABILITIES WITH BENEFITS AND OPPORTUNITIES EQUIVALENT TO THOSE PROVIDED TO STUDENTS WITHOUT DISABILITIES IN THE FOLLOWING AREAS:~~

~~(I) PROVISION AND MAINTENANCE OF EQUIPMENT AND SUPPLIES;~~

~~(II) PROVISION OF THE OPPORTUNITY TO ACTIVELY PARTICIPATE AND BE RECOGNIZED AS AN ATHLETE OR TEAM MEMBER;~~

~~(III) SCHEDULING OF ATHLETIC ACTIVITIES, INCLUDING GAMES AND PRACTICE TIMES;~~

~~(IV) PROVISION OF FACILITIES, INCLUDING LOCKER ROOMS;~~

~~(V) ACCESSIBLE TRAVEL AND ACCOMMODATIONS;~~

~~(VI) OPPORTUNITY TO RECEIVE COACHING;~~

~~(VII) PUBLICITY AND SUPPORT SERVICES; AND~~

~~(VIII) ADMINISTRATIVE SUPPORT.~~

~~7-4B-04.~~

~~(A) EACH COUNTY SCHOOL SYSTEM SHALL DESIGNATE AT LEAST ONE QUALIFIED EMPLOYEE TO COORDINATE ITS EFFORTS TO COMPLY WITH AND CARRY OUT THE SYSTEM'S RESPONSIBILITIES UNDER THIS SUBTITLE, INCLUDING THE INVESTIGATION OF ANY COMPLAINT ALLEGING NONCOMPLIANCE WITH THE PROVISIONS OF THIS SUBTITLE.~~

~~(B) (1) EACH COUNTY SCHOOL SYSTEM SHALL ANNUALLY NOTIFY ALL STUDENTS, PARENTS, OR GUARDIANS OF THE NAME, OFFICE ADDRESS, AND OFFICE TELEPHONE NUMBER OF THE EMPLOYEE OR EMPLOYEES DESIGNATED UNDER SUBSECTION (A) OF THIS SECTION.~~

~~(2) (I) EACH COUNTY SCHOOL SYSTEM SHALL NOTIFY ALL STUDENTS, PARENTS, AND GUARDIANS OF THE RIGHTS OF STUDENTS WITH DISABILITIES UNDER THIS SUBTITLE NO LATER THAN THE FIRST WEEK OF A NEW ACADEMIC YEAR OR AT REGISTRATION.~~

~~(H) THE RIGHTS OF STUDENTS WITH DISABILITIES UNDER THIS SUBTITLE SHALL BE PUBLISHED IN ANY STUDENT HANDBOOK OR PUBLICATION DESCRIBING SCHOOL ATHLETIC OFFERINGS.~~

~~(C) (1) EACH COUNTY SCHOOL SYSTEM SHALL ADOPT AND PUBLISH GRIEVANCE PROCEDURES PROVIDING FOR PROMPT AND EQUITABLE RESOLUTION OF WRITTEN STUDENT COMPLAINTS, INCLUDING COMPLAINTS BROUGHT BY A PARENT, GUARDIAN, OR LEGAL REPRESENTATIVE OF A STUDENT WHO IS ALLEGING ANY ACTION THAT WOULD BE A VIOLATION OF THE PROVISIONS OF THIS SUBTITLE.~~

~~(2) THE FILING OF A COMPLAINT WITH A COUNTY SCHOOL SYSTEM DOES NOT LIMIT THE RIGHT OF A STUDENT, PARENT, OR GUARDIAN TO PURSUE ANY AVAILABLE LEGAL REMEDIES.~~

~~7-4B-05.~~

7-4B-04.

(A) THE DEPARTMENT SHALL MONITOR THE COMPLIANCE OF COUNTY SCHOOL SYSTEMS BOARDS WITH THE PROVISIONS OF THIS SUBTITLE.

(B) THE DEPARTMENT MAY:

~~(1) INVESTIGATE~~ INVESTIGATE AND TAKE CORRECTIVE ACTION IN RESPONSE TO COMPLAINTS FROM PARENTS, GUARDIANS, OR LEGAL REPRESENTATIVES OF STUDENTS WITH DISABILITIES WHO ALLEGE A VIOLATION OF THE PROVISIONS OF THIS SUBTITLE; ~~AND.~~

~~(2) REQUIRE CORRECTIVE ACTION PLANS FROM SCHOOLS OR COUNTY SCHOOL SYSTEMS TO EFFECTUATE COMPLIANCE WITH THE PROVISIONS OF THIS SUBTITLE.~~

~~(C) IF, AFTER PROVIDING A REASONABLE TIME FOR COMPLIANCE, THE DEPARTMENT DETERMINES THAT A SCHOOL OR COUNTY SCHOOL SYSTEM HAS FAILED TO IMPLEMENT A CORRECTIVE ACTION PLAN OR HAS OTHERWISE FAILED TO COMPLY WITH THE PROVISIONS OF THIS SUBTITLE, THE STATE BOARD, ON RECOMMENDATION FROM THE DEPARTMENT, MAY:~~

~~(1) ORDER THAT AN ATHLETIC TEAM OR TEAMS WITHIN THE APPLICABLE SCHOOL OR SCHOOL SYSTEM SHALL NOT PARTICIPATE IN OR SHALL BE DISQUALIFIED FROM INTERSCHOLASTIC ATHLETIC COMPETITION, INCLUDING POSTSEASON ATHLETIC CONTESTS FOR STUDENTS WITHOUT DISABILITIES; OR~~

~~(2) WITHHOLD FUNDS IN AN AMOUNT THAT THE STATE BOARD DETERMINES IS SUFFICIENT TO SECURE THE SCHOOL OR SCHOOL SYSTEM'S COMPLIANCE WITH THE PROVISIONS OF THIS SUBTITLE.~~

~~(D) ANY FUNDS WITHHELD BY THE STATE BOARD UNDER THIS SUBSECTION MAY BE ALLOTTED TO THE APPLICABLE SCHOOL OR SCHOOL SYSTEM UPON THE STATE BOARD'S DETERMINATION THAT THE APPLICABLE SCHOOL OR SCHOOL SYSTEM IS IN COMPLIANCE WITH THE PROVISIONS OF THIS SUBTITLE.~~

~~7-4B-06.~~

7-4B-05.

(A) ON OR BEFORE ~~OCTOBER~~ FEBRUARY 1 OF EACH YEAR, EACH COUNTY BOARD SHALL SUBMIT TO THE DEPARTMENT A REPORT OF THE SCHOOL SYSTEM'S COMPLIANCE WITH THE PROVISIONS OF THIS SUBTITLE.

(B) THE FIRST ANNUAL REPORT COMPLETED BY A COUNTY BOARD IN ACCORDANCE WITH SUBSECTION (A) OF THIS SECTION SHALL INCLUDE:

(1) ~~AN ASSESSMENT OF HOW MANY~~ THE NUMBER OF STUDENTS WITH DISABILITIES THAT PARTICIPATE IN THE SCHOOL SYSTEM'S MAINSTREAM PHYSICAL EDUCATION OR MAINSTREAM ATHLETIC PROGRAMS; AND

~~(2) THE TYPES OF DISABILITIES POSSESSED BY STUDENTS WITH DISABILITIES WHO PARTICIPATE IN THE SCHOOL SYSTEM'S PHYSICAL EDUCATION OR ATHLETIC PROGRAMS;~~

~~(3) A LIST OF ACCOMMODATIONS PROVIDED BY THE SCHOOL SYSTEM TO ENSURE PARTICIPATION BY STUDENTS WITH DISABILITIES IN SCHOOL SYSTEM PHYSICAL EDUCATION OR ATHLETIC PROGRAMS; AND~~

~~(4)~~ (2) A DESCRIPTION OF PLANS BY THE ~~SCHOOL SYSTEM~~ COUNTY BOARD TO AFFIRMATIVELY ENGAGE STUDENTS WITH DISABILITIES IN MAINSTREAM PHYSICAL EDUCATION OR MAINSTREAM ATHLETIC PROGRAMS.

(C) REPORTS SUBMITTED BY A COUNTY ~~SCHOOL SYSTEM BOARD~~ SUBSEQUENT TO THE REPORT SUBMITTED UNDER SUBSECTION (B) OF THIS SECTION SHALL BE CONSISTENT WITH REGULATIONS ADOPTED BY THE STATE BOARD. INCLUDE:

~~(1) THE NUMBER OF STUDENTS WITH DISABILITIES WHO HAVE BEEN INCLUDED IN MAINSTREAM PHYSICAL EDUCATION AND ATHLETIC PROGRAMS;~~

~~(2) THE NUMBER AND TYPE OF ACCOMMODATIONS THAT HAVE BEEN PROVIDED FOR PHYSICAL EDUCATION AND ATHLETIC PROGRAMS TO ENSURE PARTICIPATION BY STUDENTS WITH DISABILITIES;~~

~~(3) THE ADAPTED PROGRAMS THAT HAVE BEEN DEVELOPED TO PROVIDE OPPORTUNITIES FOR STUDENTS WITH DISABILITIES TO PARTICIPATE IN PHYSICAL EDUCATION AND ATHLETIC PROGRAMS;~~

~~(4) THE NUMBER OF STUDENTS WITH DISABILITIES WHO PARTICIPATED IN ADAPTED PROGRAMS; AND~~

~~(5) A LIST OF EFFORTS MADE BY THE SCHOOL SYSTEM TO ENCOURAGE THE PARTICIPATION OF STUDENTS WITH DISABILITIES IN PHYSICAL EDUCATION AND ATHLETIC PROGRAMS.~~

~~(D) THE DEPARTMENT SHALL DIRECT A COUNTY BOARD OF EDUCATION THAT HAS FAILED TO SUBMIT A REPORT REQUIRED UNDER THIS SECTION TO TAKE THOSE STEPS NECESSARY FOR THE SCHOOL SYSTEM TO COMPLY WITH THE REPORTING REQUIREMENTS OF THIS SECTION.~~

~~(E)~~ (D) ON OR BEFORE ~~DECEMBER 31~~ MAY 1 OF EACH YEAR, THE DEPARTMENT SHALL, SUBJECT TO § 2-1246 OF THE STATE GOVERNMENT ARTICLE, SUBMIT TO THE GENERAL ASSEMBLY A REPORT OF ~~COUNTY SCHOOL SYSTEM~~ COMPLIANCE WITH THE PROVISIONS OF THIS SUBTITLE.

~~7-4B-07, 7-4B-06.~~

(A) THE DEPARTMENT SHALL ADOPT REGULATIONS AS NECESSARY TO IMPLEMENT THIS SUBTITLE.

(B) THE DEPARTMENT SHALL PROVIDE TECHNICAL ASSISTANCE TO COUNTY ~~SCHOOL SYSTEMS~~ BOARDS CONCERNING THE PROVISIONS OF THIS SUBTITLE.

~~(C) (1) THE RIGHTS, REMEDIES, AND PROHIBITIONS PROVIDED UNDER THIS SUBTITLE SHALL BE IN ADDITION TO AND CUMULATIVE OF ANY OTHER RIGHT, REMEDY, OR PROHIBITION PROVIDED UNDER COMMON LAW, FEDERAL LAW, ANY OTHER LAWS OF THIS STATE, A CONSENT DECREE, OR ANY OTHER SETTLEMENT AGREEMENT ENTERED INTO BY A LOCAL OR STATE~~

~~GOVERNMENTAL AGENCY TO ADDRESS EQUITY FOR INDIVIDUALS WITH DISABILITIES IN PHYSICAL EDUCATION OR ATHLETIC PROGRAMS.~~

~~(2) THIS SUBTITLE MAY NOT BE CONSTRUED TO DENY, ABROGATE, OR IMPAIR ANY SUCH FEDERAL OR STATE COMMON LAW OR STATUTORY RIGHT, REMEDY, OR PROHIBITION.~~

~~(D) (C) (1) THE PROVISIONS OF THIS SUBTITLE MAY BE ENFORCED AGAINST THE STATE BOARD OR A COUNTY SCHOOL SYSTEM BOARD BY A CIVIL ACTION FOR ANY AVAILABLE RELIEF, INCLUDING INJUNCTIVE RELIEF OR DAMAGES, OR BOTH, WHICH SHALL BE INDEPENDENT OF ANY OTHER RIGHTS AND REMEDIES AND SHALL INCLUDE A RIGHT TO ATTORNEYS' FEES.~~

~~(2) A COURT MAY AWARD ATTORNEY'S FEES.~~

SECTION 2. AND BE IT FURTHER ENACTED, That any county ~~school system~~ board of education subject to the provisions of this Act shall be in compliance with the provisions of this Act as expeditiously as possible, but no later than 3 years from the effective date of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2008.

Approved by the Governor, May 13, 2008.