

# RICHARDS LINDSAY & MARTÍN, L.L.P.

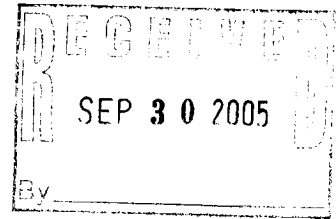
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September 28, 2005



Ms. Paula Renken  
Superintendent of Schools  
Brackett Independent School District  
P.O. Box 586  
Brackettville, Texas 78832

RE: Participation of special education students in honor roll and class ranking.

Dear Ms. Renken:

This opinion letter is in response to the District's inquiry regarding Brackett ISD's current policies regarding the participation of special education students in honor roll and class ranking. I hope the following discussion assists the District in its decision-making process.

The specific issue in question is whether the District's current policy regarding the participation of students eligible under the Individuals with Disabilities Education Act (IDEA, at 20 U.S.C. §601, et seq.) in the District's honor roll award and class rank systems complies with federal law. Section II of a District Handbook, under the heading "Awards and Honors," states that "[s]tudents who are receiving modified instruction are not eligible for honor roll recognition." Ms. Judy Blankenship, who provided me with a copy of the policy, indicated that in practice, the effect of the policy is to exclude special education students from participation in honor roll awards and recognition. Ms. Luisa Stone, at the High School, indicated that while this might be the practice in elementary and middle school, it is not the practice of the high school, which includes special education students in its class ranking systems.

In a key letter issued in 1996 on this issue, the Office for Civil Rights (OCR) stated that with respect to honors and class ranking systems, "grades earned by students with disabilities cannot categorically be disregarded or excluded, even if earned with the support of special education services." *Letter to Runkel*, 25 IDELR 387, 390 (OCR 1996). Although OCR indicated that schools certainly could establish eligibility standards for class ranking and honors, it stated that any system that categorically excludes grades earned by students with disabilities would be in violation of the anti-discrimination protections of the Rehabilitation Act of 1973, commonly known as "Section 504."

Since all special education students receive some degree of "modified instruction," either by virtue of modified curriculum in resource or self-contained classes, or in the form of instructional delivery modifications in regular classes, it appears that the District's policy in fact would categorically

exclude all special education students from participation in honor roll and class ranking systems. Thus, the policy is currently susceptible to legal challenge under §504, primarily in the form of a complaint with the OCR, which can result in an investigation, potential formal findings of non-compliance, or OCR orders to change the policy, with continuing oversight by OCR.

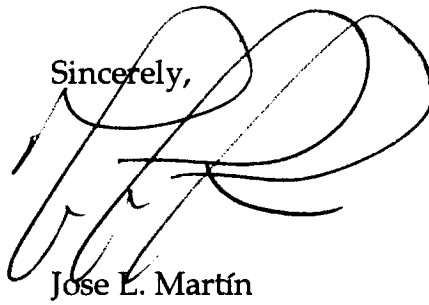
Many districts have dealt with this problem by creating a committee that analyzes all courses, including special education courses, to assign them relative "weights" corresponding to their level of academic difficulty. Under such a system, advanced courses would receive higher weight than regular courses, which would receive higher weights than basic courses, and so on. Within the group of special education classes, for example, there would be relatively high-level resource classes teaching one or two years behind grade level, as well as self-contained life skills settings where instruction is at the lowest levels of the TEKS, if not lower. A sound weighting system can study these curriculum differences and assign each of these classes a fair weight. As long as such a weighting system is based on objective rating criteria, the *Runkel* letter indicates such a system would comply with §504. And, under objective rating criteria, if a committee felt that some low-level special education classes should receive the lowest weights based on the degree of academic difficulty of the range of curriculum taught in them, that would be allowed under the *Runkel* guidance. The problem, however, is in maintaining a policy under which special education students are fully excluded from the class ranking and honors systems, even if only at the elementary and middle school level.

Moreover, the *Runkel* letter also makes clear that OCR's position is that if a student receives only instructional modifications, but is responsible for grade-level curriculum standards, then that student's report card or transcript should not bear any special notation (such as "modified," "special education," or any such similar marking). Thus, grades earned by special education students in regular classes with modifications, but on grade-level TEKS, should not be adjusted simply because modifications were provided.

In sum, the District should consider revising its handbook policy that excludes students receiving modified instruction. Such a policy is likely to be found in violation of §504 if challenged. Instead, the District should consider a class weighting system for all classes, based on objective rating criteria dependent on the relative difficulty of the curriculum taught in each class. Such a system ensures fair participation of special education students while also preventing special education students from gaining an unfair advantage in the honors and class ranking systems. Ms. Stone indicated that the District is considering implementing such a system next year. If any legal assistance is required in that regard, I would be glad to assist in any way I can.

Please contact me at your convenience if you have any questions or comments regarding this letter.

Sincerely,

A stylized, handwritten signature in black ink. The signature is written over the word "Sincerely," and extends downwards and to the right, crossing over itself. It appears to be a cursive or semi-cursive script.

Jose L. Martin