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DA: November 4, 2013
RE: Physical Education and High School Programs – Reminder on Five Issues
Relating to Compliance

The Iowa Department of Education has recently received several waiver requests, written messages, and telephone calls about various physical education issues. Those communications suggest the need to remind the field about the requirements for physical education in the Department's general accreditation standards ("Chapter 12"). This memorandum is to provide a basic reminder on five of these issues: physical education at alternative schools and programs, physical education exemptions and excusals, the relationship between the Healthy Kids Act's "physical activity" requirement and "physical education," "contract" or independent study physical education, and single-sex physical education activities.

I. *Physical Education at Alternative Schools and Programs*

The Iowa Code and the Iowa Administrative Code require that all students who are physically able be required to participate in physical education in each semester in which they are enrolled in school. Iowa Code § 256.11(5)(g) (2013); Iowa Admin. Code r. 281 – 12.5(5)"f" (2013). This requirement applies to all students who participate in alternative schools and programs. There is no mechanism where schools can unilaterally remove physical education from the educational program offered at an alternative school or program.

By definition, an "alternative school" is to provide a "comprehensive educational program" to its students and, because it is a school, must meet all accreditation requirements, including physical education. Iowa Admin. Code r. 281 – 12.2. By definition, an "alternative program" is a part of the school's regular educational program, which would include physical education. *Id.*

A student who participates in alternative programs or attends alternative schools must participate in physical education, unless the student receives a student-specific excusal of physical education (as discussed in Section II) or the Department has granted a waiver to the school or program, based on satisfaction of the high standards for a waiver of general accreditation standards (Iowa Code § 256.11(8); Iowa Admin. Code r. 281 – 12.9).

A school district may permit a waiver of the physical education requirement to particular students who attend alternative schools or participate in alternative programs; however, those waivers are based on written parent requests. Those student-specific waivers shall not be presumed, turned into “blanket” waivers, or built into the entrance process to the alternative school or program.

Example 1: A clause in an alternative program’s attendance agreement that states “By requesting to attend the XYZ School District’s Alternative Program, I agree to waive physical education” would be an impermissible coerced “choice.”

Example 2: It would be impermissible to state “We are an off-campus program, so we do not need to have physical education” (attempting to rely on the “off-campus program” rule described below) because that eliminates the requirement that physical education excusals be requested by parents.

Example 3: It would be impermissible to state “Our schedule at the QRST Alternative Program is too full, so physical education is not available.” The “full schedule” excusal (discussed below), in addition to being student-specific and parent-requested, does not permit alternative schools or programs to construct their schedules in such a way that there is no room for physical education.

Example 4: It would be impermissible to state “Students who are ‘over-aged-and-under-credited’ will not take PE so they maximize the number of credits they can earn in the alternative setting.” As noted in Example 3, a school cannot over-schedule to avoid offering physical education. While it is important that students who are behind trajectory to graduate earn credits as rapidly and as meaningfully as possible, the law requires participation in physical education unless one of the excusals is applicable. If a parent wants a child to fill the child’s schedule with credit and component recovery courses and activities and thereby request a waiver of

physical education, that is the parent's decision to make. It cannot be made by the school for all children.

While students in alternative programs and schools are required to participate in physical education, the activities and facilities need not be identical to the activities and facilities at a comprehensive school, so long as the content specifications in Rule 12.5(5)"f" are available to students in alternative programs and schools.

In considering the required offering of physical education in alternative schools, teachers and administrators may wish to give great weight to the proven, positive relationship between fitness and academic achievement. As a general rule, fit students learn and perform better. While the physical education program and methods at alternative schools and programs may look different than at other schools, it is a legal obligation to make physical education available and taught by a teacher with the appropriate physical education licensure.

II. Physical Education Exemptions and Excusals ("Waivers") For Individual Students

As noted above, all physically able students are required to enroll in physical education in each semester they are enrolled. The law provides several narrow exceptions to and excusals from that requirement.

A. Mandatory Exemptions

1. Medical Exemption

If a parent files a statement signed by a physician that a student is not "physically able" to participate in physical education, then the student is exempt from physical education. See Iowa Code § 256.11(6). If a document is signed by a physician, it shall not be questioned by the school.

This exemption applies for grades 1-12, and also applies to health courses and the "physical activity" and "CPR course" requirements of the Healthy Kids Act (See Section III).

2. Conflict with Religious Belief

If a parent of a student files a written statement with the school principal that a physical education course conflicts with the "pupil's religious belief," the student

shall be exempt from participation in the physical education course. Iowa Code § 256.11(6)(a).

If a parent files such a statement, the student is exempted, without question, from physical education. The school has no discretion to deny the exemption. School officials shall not require the parent to provide proof of or otherwise question the sincerity of the asserted belief.

This exemption applies for grades 1-12, and also applies to health courses and the “physical activity” and “CPR course” requirements of the Healthy Kids Act (See Section III).

B. Discretionary Excusals Available to Students in Twelfth Grade

A high school’s principal has the discretion to grant excusals from physical education to students in the twelfth grade in three instances, if requested by a parent or guardian in writing. These excusals need not be available on demand, and a school may set reasonable conditions on receiving one of these excusals. The principal must be rational and even-handed in granting or denying requested excusals. The principal must carefully balance all factors when determining whether to grant these excusals.

A principal may not grant any of these excusals until the principal has received a written request from a student’s parent or guardian. These excusals are to be considered on a student-by-student basis. They are not to be granted on a “blanket” or “en masse” basis. *In re Jed and Tessa Thompson*, 10 D.o.E. App. Dec. 195, 201 (Iowa St. Bd. of Educ. 1993).

The law requires that the principal notify the superintendent of the school district or nonpublic school of any student excused from physical education under these provisions.

1. Off-Campus Educational Program

If a twelfth grade student is enrolled in a “cooperative, work study, or other educational program authorized by the school” requiring the student’s absence from school premises during the school day, the principal may excuse the student from the physical education requirement. Iowa Code § 256.11(5)(g)(1)(a); Iowa Admin. Code r. 281 – 12.5(5)“f”(1).

If the student drops the course, the student must enroll in physical education.

If the student spends their entire school day in a location other than the child's school (e.g., all of the student's education is provided at an off-campus alternative school), this excusal is not available. It is only available for students who divide their time between two locations. If a student spends their entire school day at another location, the student is required to take physical education at that location (unless another excusal ground applies).

Note that the off-campus educational program must be "authorized" by the school, and it must require the student's absence during the school day. If the student participates in an off-campus educational activity that occurs outside of the school day, such as work study on weekends or a college class in the evening, this excusal is not available.

This is not a blanket excusal for students in "vocational" programs. First, the law does not restrict off-campus programs to those programs providing career and technical education content (e.g., a student could be taking an off-campus foreign language course). Second, students whose educational programs are entirely on-campus, including on-campus work study programs, are not eligible to request this excusal. Enrollment in an on-campus career and technical education course, standing alone, does not qualify for this excusal. For example, a student who is enrolled in an on-campus work-study program in the school's food service department is not eligible for this excusal.

2. Academic Course Not Otherwise Available

If a twelfth grade student seeks to enroll in "academic courses not otherwise available to the student," the student's parent may request excusal from physical education, in writing. Iowa Code § 256.11(5)(g)(1); Iowa Admin. Code r. 281 – 12.5(5)"f"(2); see generally *In re Jed and Tessa Thompson*, 10 D.o.E. App. Dec. 195. This matter is within the principal's discretion.

To qualify under this excusal provision, it is not necessary that the course at issue be a core course or a graduation requirement. The course may be an elective. *Id.*

If the student drops the course, the student must enroll in physical education.

This excusal is only available if the item in the student's schedule is an academic course. A student cannot take advantage of this excusal if the basis for it is a time conflict with something that is not an academic course, such as an optional study hall or an opportunity for early dismissal.

Example 5: ABCD High School has an eight period day. A high school senior schedules five periods of required courses (other than physical education), a mandatory study hall, and an elective Ceramics class. She also wants to take an eighth period of Auto Mechanics, also an elective, in lieu of physical education. The principal has the discretion to excuse the student from physical education so she may take Auto Mechanics. Alternatively, the principal has the discretion to deny the excusal and require the student to choose which of her electives she wishes to forego.

Example 6: EFG High School has an eight period day. A high school senior has six periods of required courses (other than physical education) and an elective vocal music class. He wants to be excused from physical education for the eighth period of the day so he may take advantage of early dismissal. "Early dismissal" is not an academic course, so this excusal is not available.

It would be improper to automatically and categorically excuse twelfth grade students from physical education based on "participation in an advanced placement course," "registration in foreign language," "registration for an instrumental or vocal music course," "participation in alternative program," or similar categorical statements. Statements such as this improperly eliminate the requirement that the parent make a written request for excusal from physical education.

Schools may not make blanket excusals from physical education because the school has what the school considers to be "more rigorous" graduation requirements.

Example 7: HIJ High School requires 64 credits to graduate, which include a requirement to take a one credit "College Readiness" course. A high school senior has room for eight credits in her final semester, requires eight credits to graduate, and has not taken College Readiness. She has seven credits in her schedule already (six required and one elective). Her principal has the discretion to excuse her from physical education so she may take College Readiness. Alternatively, the principal may deny the excusal and require her to take physical education in lieu of her one elective course.

Example 8: KLM High School requires 64 credits to graduate, which include a requirement to take a one credit "College

Readiness” course. The school has a “policy” that students are excused from physical education in the semester that the student enrolls in College Readiness. This is impermissible.

3. Organized and Supervised Athletic Program

If a twelfth grade student is participating in an “organized and supervised athletic program which requires at least as much participation per week as one-eighth unit of physical education,” the student’s principal may excuse the student from physical education. Iowa Code § 256.11(5)(g)(1)(b); Iowa Admin. Code r. 281 – 12.5(5)“f”(3).

If the student withdraws from the activity, the student must enroll in physical education.

To be eligible for this excusal, the activity must equal or exceed nine hundred minutes in a semester. If the activity does not equal nine hundred minutes in a semester, parents of seniors participating in the activity are not eligible to request this excusal.

Example 9: A twelfth grade student participates in a physical fitness club sponsored by the school and supervised by an appropriately licensed and endorsed teacher. It meets for forty-five minutes each Wednesday for the eighteen week semester. This equals 810 minutes. Because this is less than 900 minutes, participation in this activity does not create eligibility to request an excusal under this rule.

To qualify as an “organized and supervised athletic program,” the activity must be sponsored by the school or school district. Outside activities sponsored by other entities are not eligible for this excusal.

Example 10: A twelfth grade student participates in a youth basketball league sponsored by a city’s parks department. That activity, not sponsored by the school district, is not eligible for this excusal.

The activity must also be supervised by appropriately licensed and endorsed school staff. For example, for a school’s cheerleading squad, drill team, dance team, show choir or similar to be “supervised” under this excusal, the activity must be supervised by school employees with appropriate physical education or coaching endorsements issued by the Iowa Board of Educational Examiners. If

the activity is not supervised by an appropriately licensed and endorsed employee, it does not qualify for this excusal.

It would be improper to automatically and categorically excuse twelfth grade students from physical education based on “participation in sports,” “participation in drill team,” “participation in show choir,” or similar categorical statements. First, statements such as these improperly presume that the activity meets the requirements of the excusal (number of minutes, appropriate supervision). Second, statements such as these improperly eliminate the requirement that the parent make a written request for excusal from physical education.

C. Discretionary Excusals Available to Students in Ninth, Tenth, and Eleventh Grades

There are two discretionary excusals available to students in ninth, tenth, and eleventh grades. The two available excusals are similar to two of the excusals available to twelfth grade students, but with important differences.

Like excusals available to seniors, these two excusals are not available on demand, and a school may set reasonable conditions on receiving one of these excusals. The school or school district must be rational and even-handed in granting or denying requested excusals. The school or school district must carefully balance all factors when determining whether to grant these excusals.

A school or school district may not grant any of these excusals until the school has received a written request from a student’s parent or guardian. These excusals are to be considered on a student-by-student basis. They are not to be granted on a “blanket” or “en masse” basis. *In re Jed and Tessa Thompson*, 10 D.o.E. App. Dec. at 201.

The law requires that the principal notify the superintendent of the school district or nonpublic school of any student excused from physical education under these provisions.

1. Academic Course Not Otherwise Available

If a ninth through eleventh grade student seeks to enroll in “academic courses not otherwise available to the student,” the student’s parent may request excusal from physical education, in writing, if the school district’s board of directors or the authorities in charge of a nonpublic school determine that students from the school may be excused from physical education. Iowa Code § 256.11(5)(g)(1); Iowa Admin. Code r. 281 – 12.5(5)“f”. This excusal requires action by the school

board or nonpublic school's authorities before it is available. Policies implementing this excusal usually delegate the authority to grant excusals to the high school's principal. Absent such authorization, the school's principal has no authority to grant a requested excusal.

To qualify under this excusal provision, it is not necessary that the course at issue be a core course or a graduation requirement. The course may be an elective. *See generally In re Jed and Tessa Thompson*, 10 D.o.E. App. Dec. 195. This excusal is only available if the item in the student's schedule is an academic course. A student cannot take advantage of this excusal if the basis for it is a time conflict with something that is not an academic course, such as an optional study hall or an opportunity for early dismissal.

Example 11: NOP High School has an eight period day. A high school junior schedules six periods of required courses (other than physical education) and an elective Latin class. He also wants to take an eighth period of Baking, also an elective, in lieu of physical education. The principal has the discretion to excuse the student from physical education so he may take Baking. Alternatively, the principal has the discretion to deny the excusal and require the student to choose which of his electives he wishes to forego.

Example 12: QRS High School has a seven period day. A high school sophomore has five periods of required courses (other than physical education) and an elective instrumental music class. She wants to be excused from physical education for the seventh period of the day so she may take advantage of an optional study hall. An optional "study hall" is not an academic course, so this excusal is not available.

It would be improper to automatically and categorically excuse ninth through eleventh grade students from physical education based on "participation in an advanced placement course," "registration in foreign language," "registration for an instrumental or vocal music course," "participation in alternative program," or similar categorical statements. Statements such as these improperly eliminate the requirement that the parent make a written request for excusal from physical education.

If the student drops the course, the student must enroll in physical education.

As is the case for seniors, schools and school districts may not make blanket excusals from physical education for ninth through eleventh grade students

because the school or school district has what it considers to be more rigorous graduation requirements. See Examples 7 and 8.

2. Organized and Supervised Athletic Program

If a ninth, tenth, or eleventh grade student is participating in an “organized and supervised athletic program which requires at least as much participation per week as one-eighth unit of physical education” at some time during one semester, quarter, or trimester in a school year, the student’s principal may excuse the student from physical education for one quarter, semester, or trimester per year, after consultation with the student’s guidance counselor. Iowa Code § 256.11(5)(g)(2); Iowa Admin. Code r. 281 – 12.5(5)“f”. This excusal must be requested by the parent, in writing.

Unlike the similar excusal that may be granted to high school seniors, this excusal requires involvement of the student’s guidance counselor. This is to ensure the child’s multiple academic and developmental needs are met, and to ensure that the child and parents are aware of the positive and negative consequences of excusal from physical education.

If the student withdraws from the activity, the student must enroll in physical education.

Unlike the similar excusal that may be granted to high school seniors, this excusal only allows excusal from one semester, trimester, or quarter of physical education. It is not available for additional semesters, trimesters, or quarters during that school year.

Example 13: A ninth grade student at TUVW High School is excused from physical education for the fall semester due to her membership on the school’s swimming team. She and her parent request excusal for the spring semester due to her membership on the school’s tennis team. That excusal must be denied, as the student has already been excused from one semester of physical education during the school year.

There are some common elements with the similar excusal for twelfth grade students. First, to be eligible for this excusal, the activity must equal or exceed nine hundred minutes in a semester. If the activity does not equal nine hundred minutes in a semester, parents of seniors participating in the activity are not eligible to request this excusal.

Example 14: A tenth grade student participates in a weight lifting club sponsored by XYZ High School and supervised by an appropriately licensed and endorsed teacher. It meets for forty-five minutes each Tuesday morning before school for the eighteen week semester. This equals 810 minutes. Because this is less than 900 minutes, participation in this activity does not create eligibility to request an excusal under this rule.

The second similarity involves school sponsorship. To qualify as an “organized and supervised athletic program,” the activity must be sponsored by the school or school district. Outside activities sponsored by other entities are not eligible for this excusal.

Example 15: An eleventh grade student takes evening ballroom dance lessons made available by the local community college’s community education division. That activity, not sponsored by a school or school district, is not eligible for this excusal.

The third similarity involves the credentials of those providing the supervision. The activity must be supervised by appropriately licensed and endorsed school staff. For example, for a school’s cheerleading squad, drill team, dance team, show choir or similar to be “supervised” under this excusal, the activity must be supervised by school employees with appropriate physical education or coaching endorsements issued by the Iowa Board of Educational Examiners. If the activity is not supervised by an appropriately licensed and endorsed employee, it does not qualify for this excusal.

The final similarity is the fact that this excusal is not one-size-fits all. It is improper to automatically and categorically excuse ninth, tenth, or eleventh grade students from physical education based on “participation in sports,” “participation in drill team,” “participation in show choir,” or similar categorical statements. First, statements such as this improperly presume that the activity meets the requirements of the excusal (number of minutes, appropriate supervision, etc.). Second, statements such as this improperly eliminate the requirement that the parent make a written request for excusal from physical education. Third, it eliminates the important and statutory role of the student’s guidance counselor in the decision-making process.

D. Students Who Qualify for More than One “Excusal” Ground

Schools and school districts must be aware that some particularly active students will have more than one ground for excusal. While only one ground is

necessary, more than one ground may exist. In that case, if one of the grounds becomes unavailable to the student, the school or school district considers the other ground or grounds. The school is to prudently exercise its discretion, keeping in mind the purpose of each excusal and working to avoid further disruptions to the student's high school experience.

Example 16: A high school senior is involved in extracurricular athletics at ZYX High School and is eligible for an excusal based on her participation in basketball. She also has eight academic courses in an eight-period schedule. The senior and her family requested an excusal based on her academic load, which was granted. The senior and her family did not need to request an excusal based on her participation in basketball. During the semester, the senior decides to drop an elective course. This is to allow herself time outside of school hours to take an evening job to save for college. The school insists that the student enroll in physical education. The student and family request that the school continue to excuse the child based on participation in basketball. The school should consider this request in light of the purposes of the laws allowing for excusal from physical education, with consideration for the disruption of the student's education.

III. Relationship Between "Physical Education" and "Physical Activity"

In 2008, Iowa enacted the Healthy Kids Act. As part of that law, schools and school districts must require that physically able students in grades six through twelve engage in one hundred and twenty minutes (120) per week of physical activity, *see* Iowa Code § 256.11(6)(b)(2), in weeks in which there are five days of school, *see* Iowa Admin. Code r. 281 – 12.5(19). "Physical activity" is defined by the Iowa Administrative Code as "any movement, manipulation, or exertion of the body that can lead to improved levels of physical fitness and quality of life." Iowa Admin. Code r. 281 – 12.2.

A school or school district shall not reduce instructional time to implement the Healthy Kids Act's physical activity requirement. Iowa Code § 256.11(6)(b)(3); Iowa Admin. Code r. 281 – 12.5(19)"c". The Iowa Administrative Code provides that a school or school district may meet the physical activity requirement through "physical education classes, activities during recess or during class time, and before- or after-school activities." Iowa Admin. Code r. 281 – 12.5(19)"c".

A student in grades six through twelve who takes part in "an organized and supervised athletic program or non-school-sponsored extracurricular activity

which requires the student to participate in physical activity for a minimum of one hundred twenty minutes per week is exempt” from the “physical activity” requirement. Iowa Code § 256.11(6)(b)(2). The Iowa Administrative Code provides examples of ways to meet this requirement:

- (1) Interscholastic athletics sponsored by the Iowa High School Athletic Association or Iowa Girls High School Athletic Union;
- (2) School-sponsored marching band, show choir, dance, drill, cheer, or similar activities;
- (3) Nonschool gymnastics, dance, team sports, individual sports;
- or
- (4) Similar endeavors that involve movement, manipulation, or exertion of the body.

Iowa Admin. Code r. 281 – 12.5(19)“a”. If the student meets some or all of the one hundred and twenty minutes per week with non-school activities, the school or school district and the student shall enter into a written agreement, as provided in the Iowa Administrative Code. *Id.* r. 281 – 12.5(19)“b”.

The written contract permitted by this rule is not a means of earning a physical education credit or demonstrating eligibility for a physical education excusal.

A parent may request a child be exempted from the physical activity requirement based on conflict with religious beliefs. Iowa Code § 256.11(6)(a); Iowa Admin. Code r. 281 – 12.5(6). *See* Section II.A.2.

“Physical activity” and “physical education” are conceptually related, but legally separate. For example, a student may satisfy the physical activity requirement in a manner that qualifies for neither a physical education excusal nor a physical education credit. Likewise, an activity that satisfies a requirement for a physical education credit or excusal may not meet the minimum physical activity requirement. In that case, the minimum physical activity requirement must be met by other means.

Example 17: A high school senior participates in a recreational basketball league arranged by the city’s parks department. The league has practice one hour a week on Wednesday nights and one hour a week on Friday nights. During the weeks that the league is in session, the basketball league is eligible to meet the Healthy Kids Act’s physical activity requirement because it equals one hundred twenty minutes per week. The activity would not qualify for a

physical education excusal because it is not under organized and supervised by a school or school district.

Example 18: A high school senior participates in an afterschool strength and agility training program supervised by appropriately credentialed school personal. The activity meets for ten weeks, at ninety minutes per week. The activity is eligible for an excusal as an organized and supervised athletic program that equals nine hundred minutes in a semester; however, because the activity is less than one hundred and twenty minutes per week, the senior will be required to engage in additional physical activity.

The “physical activity” requirement is a part of the accreditation standards. It is not a graduation requirement. Schools and school districts must maintain documentation to demonstrate compliance with this requirement. *Id.* r. 281 – 12.5(19)“d”. “This documentation may be provided through printed schedules, district policies, student handbooks, and similar means.” *Id.*

IV. “Contract” or “Independent Study” Physical Education

The use of physical activity “contracts” to meet the requirements of the Healthy Kids Act has led to the belief that a physical activity “contract,” standing alone, may lead to awarding a physical education “credit.” This is incorrect, based on general accreditation standards.

To earn a credit, a student must complete all or a portion of a “unit.” Iowa Admin. Code r. 281 – 12.5(15). The definition of a unit requires that it be “taught.” *Id.* r. 281 – 12.5(14). Before awarding a credit for “contract” or “independent study” physical education, a school or school district must ensure that a student receives instruction from a teacher during the term of the contract or independent study period. The question about whether a course is “taught” is answered with reference to the general accreditation standards definition of “teacher.” “Teacher” for accreditation purposes is defined as follows:

A teacher diagnoses, prescribes, evaluates, and directs student learnings in terms of the school’s objectives, either singly or in concert with other professional staff members; ... and evaluates or assesses student progress during and following instruction in terms of the objectives sought, and uses this information to develop further educational procedures.

Iowa Admin. Code r. 281 – 12.4(8) (language omitted and emphasis added).

In light of this rule, to be “taught” and eligible to earn a “credit,” a physical education “contract” or independent study plan must have a learning objective related to one or more of the physical education content specifications from Chapter 12 (“physical fitness activities that increase cardiovascular endurance, muscular strength and flexibility; sports and games; tumbling and gymnastics; rhythms and dance; water safety; leisure and lifetime activities,” *see id.* r. 281 – 12.5(5)“f”). The learning objective must be selected on conjunction with an appropriately licensed teacher and based on the student’s current and individual needs. The contract or plan must contain a description of how the child’s participation will be supervised by the teacher, including a description of how the student’s progress will be monitored and assessed and how its contents will be revised, if necessary, based on lack of progress or greater-than-expected progress. The contract or plan must contain a description of what objective must be attained for a credit to be successfully completed. Consider the following examples which relate to the content specification of cardiovascular endurance.

Example 19: A student at WVU High School completes a “physical education contract,” in which she agrees to walk briskly for sixty minutes a week for an eighteen week semester. The contract does not contain any provision for instruction by a physical education teacher. It does not contain any objective measure for determining either whether student growth or improvement has occurred or whether the student shall receive a credit. This contract contains insufficient “teaching” to justify an award of a physical education credit.

Example 20: A student at TSR High School completes a “physical education contract,” in which she agrees to complete an eighteen-week guided study of walking/jogging theory and practice. During their first meeting, the teacher provides the student with a course outline, including a grading rubric. The teacher then completes a video-assisted walking and jogging gait analysis of the student followed by face-to-face instruction and assigned readings to reinforce the theoretical components of the content. Student is assigned a minimum of one-hour practice per day on appropriate terrains reinforcing good body mechanics. She logs her walking and jogging experiences, responds in writing to selected articles, and meets with her teacher once every two weeks to discuss and demonstrate her progress. Course assessment activities include evaluation of her log, written article responses, and a final video-assisted walking and jogging gait analysis. This contract is

“taught,” as that term is used in Iowa law and is eligible for a physical education credit.

While a physical education contract, like any independent study plan, is flexible to account for student needs, it must be “taught” to justify awarding of a credit. To the extent a plan is more similar to Example 20 than to Example 19, the more likely that awarding a credit for plan completion complies with Chapter 12 standards.

As in any independent study course, the supervising teacher of independent study or “contract” physical education must consider the student’s present performance, a meaningful and attainable learning outcome, the required instruction required to attain that outcome, and how progress will be monitored. The starting point is the student’s current attainment of physical education standards. For some students with greater needs, independent study physical education will not be appropriate.

Independent study physical education has many legitimate uses (accounting for a child’s full schedule, allowing a child to make up physical education credits that were not earned, etc.); however, independent study or “contract” physical education is not to be used to subvert the law’s physical education requirements.

V. *Single-Sex Physical Education Activities*

The Department has received several questions about whether or when it is appropriate to have single-sex or single-gender physical education classes or activities. Some questioners have wanted to have single-sex (“Sex” rather than “gender” is used in the rest of this discussion because that is the term in the statute.) physical education *activities*, such as swimming or weightlifting. Others have requested the ability to offer single-sex physical education *courses*. As a general rule, physical education courses and activities are required to be coeducational, subject to certain narrowly defined exceptions.

This rule is based on Title IX, a law passed in 1972. In relevant part, it provides:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance....

20 U.S.C. § 1681(a). Title IX governs any “public or private preschool, elementary, or secondary school” receiving such assistance. *Id.* § 1681(c).

Additionally, the general accreditation standards require school districts to “take affirmative steps to integrate students in attendance centers and courses.” Iowa Admin. Code r. 281 – 12.1(1).

Under Title IX regulations, “a recipient shall not provide or otherwise carry out any of its education programs or activities separately on the basis of sex, or require or refuse participation therein by any of its students on the basis of sex.” 34 C.F.R. § 106.34(a). The regulations provide for two exceptions to this rule for physical education classes: contact sports and ability grouping. Concerning “contact sports,” the regulations provide that Title IX

does not prohibit separation of students by sex within physical education classes or activities during participation in wrestling, boxing, rugby, ice hockey, football, basketball, and other sports the purpose or major activity of which involves bodily contact.

Id. § 106.34(a)(1). If the activity is not listed in the regulation, the school or school district must be able to demonstrate that the activity’s “purpose or *major activity* involves bodily contact.” If physical contact is a minor or rare part of the activity this exception does not apply.

Example 21: The physical education department at QRO High School has decided to divide its physical education classes by sex for contact drills, scrimmages, and games during the basketball unit. This decision is specifically authorized by the Title IX regulations; however, separation may only occur during the actual contact play, not during warm-up, lecture, demonstration, or non-contact drill work.

Example 22: The physical education department at NMLK High School has decided to separate its physical education classes by sex whenever the classes play softball. Any physical contact in softball is incidental to the game. This decision is not authorized by the Title IX regulations.

Concerning “ability grouping,” the regulations allow “grouping of students in physical education classes and activities by ability as assessed by *objective standards* of individual performance *developed and applied without regard to sex.*” *Id.* § 106.34(a)(2) (emphasis added). This regulation allows that students may be grouped on demonstrated skill or performance, even if that results in nearly all males in one group and nearly all females in another group. The grouping must be made on objective criteria, and those criteria must not be developed or

applied for the purpose of separating males and females, or based on sex stereotypes.

Example 23: The physical education department at JIH High School has decided to separate students for distance running activities based on pace per mile, which results in more males than females in one pace group, more females than males in one pace group, and two pace groups that are almost exclusively male and female, respectively. The decision was made on the results of an initial one mile run. This action is permissible.

Example 24: The physical education department at GFE High School has decided to separate students for swimming into the “girls group” and the “boys group,” based on its perception that males are stronger swimmers. The odd result of this decision is that the “boys group” contains non-swimmers and the “girls group” contains the four members of a conference-record-holding relay team. This decision is not allowed by the Title IX regulations, as it is based on sex stereotypes and is not based on objective measures of ability.

Example 25: DCBA High School has decided to separate students for swimming instruction into the “boys group” and the “girls group” based on concerns about student modesty. This is not based on ability grouping or student performance. Modesty concerns, while legitimate, must be addressed in other manners (such as by physical education uniform requirements adopted by a school district’s board of directors to create a “positive educational environment,” see Iowa Code § 279.58).

There are two exceptions in the Title IX regulations that might not be directly related to physical education courses or activities, but may relate tangentially depending on how physical education is included in a school’s schedule or curriculum. First, the regulations allow separation based on sex when content on human sexuality is presented and discussed. *Id.* § 106.34(a)(3). Second, the regulations allow for grouping based on vocal range in vocal music activities. *Id.* § 106.34(a)(4).

The Title IX regulations were amended in 2006 to allow experimentation with sex-segregated classes (including but not limited to physical education classes), if the following conditions are met.

(1) General standard. Subject to the requirements in this paragraph, a recipient that operates a nonvocational coeducational elementary or secondary school may provide nonvocational single-sex classes or extracurricular activities, if –

- (i) Each single-sex class or extracurricular activity is based on the recipient's important objective –
 - (A) To improve educational achievement of its students, through a recipient's overall established policy to provide diverse educational opportunities, provided that the single-sex nature of the class or extracurricular activity is substantially related to achieving that objective; or
 - (B) To meet the particular, identified educational needs of its students, provided that the single-sex nature of the class or extracurricular activity is substantially related to achieving that objective;
- (ii) The recipient implements its objective in an evenhanded manner;
- (iii) Student enrollment in a single-sex class or extracurricular activity is completely voluntary; and
- (iv) The recipient provides to all other students, including students of the excluded sex, a substantially equal coeducational class or extracurricular activity in the same subject or activity.

(2) Single-sex class or extracurricular activity for the excluded sex. A recipient that provides a single-sex class or extracurricular activity, in order to comply with paragraph (b)(1)(ii) of this section, may be required to provide a substantially equal single-sex class or extracurricular activity for students of the excluded sex.

(3) Substantially equal factors. Factors the Department will consider, either individually or in the aggregate as appropriate, in determining whether classes or extracurricular activities are substantially equal include, but are not limited to, the following: the policies and criteria of admission, the educational benefits provided, including the quality, range, and content of curriculum and other services and the quality and availability of books, instructional materials, and technology, the qualifications of faculty and staff, geographic accessibility, the quality, accessibility, and

availability of facilities and resources provided to the class, and intangible features, such as reputation of faculty.

(4) Periodic evaluations.

(i) The recipient must conduct periodic evaluations to ensure that single-sex classes or extracurricular activities are based upon genuine justifications and do not rely on overly broad generalizations about the different talents, capacities, or preferences of either sex and that any single-sex classes or extracurricular activities are substantially related to the achievement of the important objective for the classes or extracurricular activities.

(ii) Evaluations for the purposes of paragraph (b)(4)(i) of this section must be conducted at least every two years.

34 C.F.R. § 106.34(b).

Several items are noteworthy. First, the regulation requires that single-sex education be based on clearly identified educational objectives that are “substantially related” to single-sex education, and not based on sex stereotypes or the desire to separate the sexes as an end in itself (rather than as a means to attain an educational objective). Second, this regulation requires that the school or school district keep data to evaluate the effectiveness of the single-sex class. If a single-sex class is not based on “genuine” educational justifications, it must be discontinued. Third, both sexes must be provided with “substantially equal” educational opportunities. Fourth, enrollment in a single-sex course must be “*completely* voluntary.” The United States Department of Education was intentional in its use of this modifier. Coerced, “voluntary” choices (“If you don’t agree to participate in this single-sex activity, then we won’t be able to have it. You don’t want to be responsible for that, do you?”) do not qualify under this regulation.

If a school or school district chooses to pursue the exception allowed by regulation 106.34(b), it must also file an exemption request (“waiver”) under the general accreditation standards. Iowa Admin. Code r. 281 – 12.9.