Interscholastic Sports, Extracurricular Activities, and the Law: Accommodating Students with Disabilities

What accommodations must be made to allow students with disabilities to participate in extracurricular activities?

By Allan G. Osborne Jr., Ed.D., and Charles J. Russo, J.D., Ed.D.

In most school systems in the United States, interscholastic sporting events and other extracurricular activities help bring people together while enhancing opportunities for students to become integral parts of their communities.

Because of the important role that extracurricular activities, especially sports, play in the lives of students, schools, and communities, litigation has addressed the extent to which a particular portion of the student population, children with disabilities, are entitled to accommodations affording them opportunities to participate in these school-sponsored events.

Virtually identical language in Section 504 of the Rehabilitation Act and the Americans with Disabilities Act (ADA) requires school officials in programs receiving federal financial assistance to make individualized determinations in granting reasonable accommodations for students who are otherwise qualified to participate in extracurricular activities.

Since courts generally have not required educators to include extracurricular activities in the individualized education programs of students who are covered by the Individuals with Disabilities Education Act (2005), this column focuses on the two laws that have generated most of the controversies: Section 504 and the ADA.

Section 504 and the ADA

Section 504 and the ADA require education officials in programs receiving federal financial assistance to make individualized reasonable accommodations for students who are otherwise qualified to participate in school activities. However, officials can limit or avoid making accommodations based on three sometimes-overlapping defenses.

1. Officials can avoid making accommodations that result in "a fundamental alteration in the nature of [a] program" (*Southeastern Community College v. Davis* 1979, p. 412).
2. Educators do not have to make modifications that would impose "undue financial burden[s]" on their budgets (*Southeastern Community College v. Davis* 1979, p. 412).
3. Officials can excluded "otherwise qualified" persons from activities if their presence creates a substantial risk of injury to themselves or others (*School Board of Nassau County, Florida v. Arline* 1987).

Of course, each of these defenses must be applied in light of the unique facts of each request that students and their parents present. Most requests for accommodations under Section 504 and the ADA involve waivers of ordinary participation requirements for extracurricular activities. The cases reviewed in the remainder of this

section examined age limits for student-athletes, residency requirements, disciplinary rules, skill levels, and access to athletic facilities.

AGE LIMITS

Litigation on age-limitation rules has led to mixed results. On the one hand, courts ordered school boards and the athletic associations overseeing interscholastic sports to waive or consider waiving age-limitation requirements to allow older students who repeated grades due to their learning disabilities to participate (*University Interscholastic League v. Buchanan* 1993; *Hoot v. Milan Area Schools* 1994; *Cruz ex rel. Cruz v. Pennsylvania Interscholastic Athletic Association* 2001). These courts observed that associations often granted waivers of other rules while treating waivers of regulations forbidding students over the age of 19 from taking part in sports as nonessential.

Conversely, other courts upheld age-limitation rules as essential (*J.M., Jr. v. Montana High School Association* 1994; *Pottgen v. Missouri State High School Athletic Association* 1994; *Sandison v. Michigan High School Athletic Association* 1995). These courts agreed that since age limits were designed to prevent teams with older students from having competitive advantages, not to mention the safety concerns, they should be left in place.

A closer examination of these cases reveals that the manner in which courts resolve disputes may depend on the skill levels of student-athletes. In other words, courts may be more inclined to grant waivers for students with low-level skills whose participation is unlikely to affect the outcome of games than for better athletes who would give their teams unfair competitive advantages.

TRANSFER RULES

A case from Tennessee permitted a student-athlete who transferred schools to access special-education services to retain his eligibility to play sports. The Sixth Circuit affirmed that insofar as preventing the student from participating in sports when he transferred schools only to access needed special-education services was a clear violation of Section 504, his football, basketball, baseball, and track teams did not have to forfeit contests in which he played (*Crocker v. Tennessee Secondary School Athletic Association* 1990).

Those students who move simply for athletic reasons, such as wanting to play on what they perceived to be better teams, are typically rendered ineligible for a year before they can participate (*Revesz ex rel. Revesz v. Pennsylvania Interscholastic Athletic Association* 2002).

DISCIPLINARY RULES

In Illinois, a federal trial court refused to enjoin officials from suspending a high school lacrosse player with disabilities who violated team disciplinary rules (*Long v. Board of Education, District 128* 2001). The court decided that the athlete's request was an unreasonable accommodation because by allowing him to play, judicial intervention might have had a negative effect on the ability of school officials to enforce codes of conduct for all students.

SKILL LEVELS

Courts ordinarily direct education officials to provide accommodations similar to those that students with disabilities receive during the school day so they can participate in extracurricular activities. Still, as reflected by a case from Indiana, student-athletes with disabilities must be able to show that they can meet ability requirements before they can receive accommodations.

A federal trial court granted a school board's motion for summary judgment, dismissing a student's Section 504 claim after he was not selected for a basketball team (*Doe v. Eagle-Union Community School Corporation* 2000). The court ruled that insofar as the student failed to display the requisite skill level to play high school basketball, his claim was without merit. The Seventh Circuit rejected an appeal as moot since the student had graduated high school (*Doe v. Eagle-Union Community School Corporation* 2001a, 2001b).

When students display the requisite skills and are otherwise qualified for participation under Section 504, school officials must provide them with reasonable accommodations. For example, the Supreme Court of Appeals of West Virginia held that a student with a hearing impairment who had the assistance of a sign language interpreter for academic subjects was entitled to the same for extracurricular activities (*State of West Virginia ex rel. Lambert v. West Virginia State Board of Education* 1994). The court thus decided that the student was entitled to the services of a signer during her basketball games because she was having trouble understanding the coach's directions during games.

ACCESS TO FACILITIES

In the relevant part of a case from New York, the Second Circuit affirmed an order in favor of a student with cerebral palsy who filed suit under the ADA (*Celeste v. East Meadow Union Free School District* 2010).

The student alleged that he was denied meaningful access to perform his duties as manager of his school's football team because architectural barriers forced him to make detours to get to and from athletic fields, which reduced the time he could devote to his tasks.

The court found that the student provided sufficient testimonial evidence of cost-effective, plausible means of remedying the architectural barriers restricting his wheelchair and crutches-assisted mobility. The court agreed with the student that the board should have placed a curb cut near the athletic fields, fixed the pave-

ment near the fields to make them more accessible, and removed cleat cleaners that were installed across the fence leading to the fields.

Recommendation for Practice

It is well settled that education officials must make reasonable accommodations for students with disabilities under Section 504 and the ADA so they can participate in sports and extracurricular activities for which they are otherwise qualified. In seeking to comply with the law, school business officials and other education leaders should devise policies that include the following elements:

1. Officials should conduct individualized annual evaluations of student-athletes to determine whether they
   - — Have impairments that are covered under Section 504 and/or the ADA.
   - — Are otherwise qualified for the activities in which they hope to participate.
   - — Are excluded from activities due to their conditions.
   - — Are entitled to waivers or accommodations if they do not meet requirements such as age, academic qualifications, or residency requirements.
   - — Have long- or short-term impairments since they can affect kinds of accommodations and related costs, such as extra personnel, that the school board may have to provide.
   - — Can be denied accommodations that create undue financial burdens.
2. While officials cannot exclude student-athletes with disabilities from sports programs solely because of their conditions, policies can make it clear that they lack a right to differential treatment. Put another way, student-athletes with disabilities must comply with such basic team requirements as skill levels and disciplinary rules. As reviewed earlier, whether students can be excused from age or residency requirements depends on their unique situations.
3. Policies should specify that qualified students are not entitled to receive identical benefits; they need only reasonable accommodations, such as more frequent breaks to participate in sports programs or sign language interpreters so as to better communicate with coaches and teammates.
4. Policies should request medical clearance or waivers from parents before allowing student-athletes to participate in sports programs if officials have reason to believe they may be at increased risk of injuries because of their impairments since this can limit or eliminate district liability.
5. Policies should note that coaches are not obligated to make substantial modifications or fundamental alterations to programs in order to provide accommodations to student-athletes if doing so would have a negative effect on the rights of others, such as limiting the playing time of those with higher skill levels.
6. School officials and their attorneys should review their policies annually to ensure that they are in keeping with the latest developments in the law.

Access for All

The bottom line is that while it may cost school boards a bit extra to ensure that students with disabilities receive accommodations allowing them to participate in extracurricular activities, they will be complying with the law.

Moreover, school business officials and other education leaders should recall that by accommodating students with disabilities to increase their participation in activities, they will be helping to strengthen the bonds between and among students, their schools, and communities.

References

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