

SHOULD ATHLETES WITH PHYSICAL ABNORMALITIES PARTICIPATE IN SPORTS? LEGAL AND PRACTICAL INSIGHTS FOR THE ATHLETIC ADMINISTRATOR

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INTRODUCTION

Should athletes with diagnosed medical disorders or physical abnormalities that threaten their health and life be permitted to play sports? This question has been asked by many athletes and sport sponsoring organizations at different levels of competition (Bishop, 2004; Downey, 1990; Gorman, 2001; Hatch, 2004; Thomsen, 2003). The very public deaths of Hank Gathers and Reggie Lewis (in 1990 and 1993, respectively) on the basketball court forced college institutions to consider preventing student-athletes with physical abnormalities (such as heart disorders, one eye, one kidney, etc.) from participating in college athletics. NBA star Reggie Lewis's death led to a legal dispute between the Boston Celtics, the Lewis family, doctors, insurance companies, and fans revolving around his right to participate in athletic competition despite a physical abnormality that exposed him to risk of injury or death. Athletic administrators fear potential legal liability for resulting injury if they allow an athlete with physical abnormalities to play a sport, especially if allowed contrary to team physician recommendations.

College athletes with physical abnormalities who have been denied participation in athletics have challenged the program's right to restrict their participation and have brought action under the Rehabilitation Act of 1973 since this act applies to recipients of federal funds. Student-athletes claim that, having met the definition of disabled under the law (having a physical or mental impairment that substantially limits one or more of the major life activities), their participation cannot be restricted because athletic participation constitutes learning, a major life activity. Therefore, the university violated the Rehabilitation Act by imposing a substantial limitation on a major life activity (Zumpano, 2002).

Claims may be brought under the Americans with Disabilities Act of 1990 (ADA) if the claimant can prove that the defendant (in this case the sport sponsoring organization) is covered under Title III (public entity or place of public accommodations). In other words, if the athlete seeks to participate in an amateur athletic event sponsored by an institution that does not receive federal funds (i.e., Little League Baseball, Pop Warner Football, etc.) then the challenge would be made under the ADA.

The purpose of this paper is to inform athletic administrators and sport managers of the issues surrounding claims of discrimination by student-athletes suffering from a physical abnormality that precludes them from competition. It is hoped that this understanding will promote diversity in sport and recreation and will allow athletes with disabilities a fair chance to compete by reviewing cases on an individualized basis. The legal implications of a decision to bar a student-athlete with a disability from participation in intercollegiate athletics include potentially expensive, time-consuming, and embarrassing claims of discrimination being filed against sport sponsoring institutions. A complete understanding of the criteria necessary to consider before making the decision and the implications of such a decision are important points for the athletic administrator to understand.

FEDERAL LEGISLATION

REHABILITATION ACT OF 1973

The passage of the Rehabilitation Act in 1973 (29 U.S.C. 701) marked the first time that Congress recognized people with disabilities as a legitimate minority group deserving protection from discriminatory practices in employment, education, and access to buildings and programs. The Act protects people with disabilities from being excluded, solely by reason of their disability, from participation in any program or activity that receives federal financial assistance, and provides opportunities for people with disabilities to join mainstream society.

To prevail under the Rehabilitation Act, an individual must prove that (a) he or she is disabled; (b) he or she is otherwise qualified for the position or services sought; (c) he or she has been excluded from the position solely because of the disability; and (d) the position exists as part of a program or activity receiving federal financial assistance. The Rehabilitation Act and its regulations provide many of the concepts and definitions that were later adopted into the Americans with Disabilities Act.

AMERICANS WITH DISABILITIES ACT OF 1990

The Americans with Disabilities Act (42 U.S.C. 12101) was designed to increase the opportunities available to Americans with disabilities so that they may participate more fully in the activities of everyday life. The Americans with Disabilities Act (ADA) broadened the scope of the Rehabilitation Act by extending the rights of the disabled against discrimination by the private sector. Qualified people with disabilities were given legally enforceable rights that provided for equal opportunities, full participation, independent living, and economic self-sufficiency in the public and private sector.

These federal disability laws have a major impact on sports by balancing the responsibility of the sponsoring institutions to enforce safety and eligibility rules against the rights of the individual to participate in athletics (Weston, 2005).

DEFINITIONAL TERMS

For an understanding of federal legislation affecting the issue of sport as a major life activity, key definitional terms must be presented.

DISABILITY

The ADA defines a disabled individual as one whom (a) has a physical or mental impairment that substantially limits one or more of the major life activities; (b) has a record of such impairment; or (c) is regarded as having such an impairment (Americans with Disabilities Act, 1990). Possessing a physical disability under one of these definitions, however, does not automatically qualify someone as disabled under the ADA. The disability must limit a major life activity to be considered a disabling condition. Also, importantly, minor conditions and temporary impairments, such as broken limbs and sprains, are not considered disabilities (Americans with Disabilities Act, 1990).

MAJOR LIFE ACTIVITY

Determining whether or not an individual qualifies as a person with a disability under the ADA is a three-step process. The Supreme Court defined the process in *Bragdon v. Abbott* (1998). First, an individual must have a physical or mental impairment. Secondly, the individual must identify the major life activity in which he or she experiences a limitation. Third, the individual must show that the impairment substantially limits the ability to perform a major life activity.

The ADA does not define the term "major life activity." The relevant definition appears in the ADA Regulations and defines major life activity as functions "such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working" (ADA Regulations, 45 C.F.R. 843 (j)(2)(i) (1985)). The list is not exhaustive and applies to activities which the general population can perform with little or no difficulty. According to the ADA Employment Provisions (1996) other major life activities include, but are not limited to, sitting, standing, lifting, and reaching. Since courts have no clear standards to guide them on what constitutes a major life activity, their decisions are often confusing and contradictory (Edmonds, 2002). Athletic administrators should be careful to assess each case on an individualized basis, as courts may view similar claims differently. This paper will examine two leading cases in this area, specifically as major life activity status applies to intercollegiate athletics.

QUALIFIED INDIVIDUAL WITH A DISABILITY

The ADA, unlike the Rehabilitation Act, defines "qualified individual with a disability" as:

[A]n individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provisions of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity. (42 U.S.C. 12131(2))

In other words, a disabled individual is otherwise qualified if reasonable accommodations enable the individual to meet the essential requirements of the program.

In determining whether someone is a qualified individual with a disability, the risk of injury may be a decisive issue (Zumpano, 2002). In *School Board of Nassau County, Florida. v. Arline* (1987), the Supreme Court ruled that the Rehabilitation Act does not prohibit disparate treatment of the handicapped if necessary to avoid exposing others to significant health and safety risks. In *Arline* (1987), the court held that the decision to exclude an individual from participating in a particular program or activity must be based on reasonable medical judgment. The nature, duration, probability, and severity of the risk from participation, and whether they can be effectively reduced by reasonable accommodation, are factors to consider if someone is otherwise qualified (Mitten, 1998).

REASONABLE ACCOMMODATION

Once a court finds that a plaintiff is disabled under the Rehabilitation Act or the ADA, it must be determined whether a reasonable accommodation or modification would enable him or her to become otherwise qualified. While the ADA does not specifically define reasonable accommodation, it does give examples. Reasonable accommodation may include (a) making existing facilities readily accessible to and useable by individuals with disabilities, (b) job restructuring, (c) reassigning an employee to a vacant position, and (d) modifying qualifying exams (Americans with Disabilities Act, 1990). An unreasonable accommodation would be one that imposes undue financial burdens or fundamentally alters the nature of the privilege or program.

If eligibility rules can be modified without sacrificing the integrity of the game, and can be considered a reasonable accommodation, then the rules of eligibility should not exclude the competitor unless necessary (Barnes, 2001). What is necessary is decided only in an individual basis. To meet the requirement of a reasonable accommodation, the ADA requires that auxiliary aids and services be provided to a qualified person with a disability, as long as the aids are neither a fundamental change to the activity nor an undue burden (Americans with Disabilities Act, 1990). Many examples of these types of reasonable accommodations appear in competitive sport. Blind runners run with sighted runners who describe the running path (United States Association of Blind Athletes, n.d.). Blind golfers are given oral instructions by sighted assistants (USGA,

2004). Deaf and hearing-impaired football players receive plays signaled by hand. Major League Baseball granted a one-handed pitcher an exception from the "motionless" rule and allowed him to adjust his grip on the ball behind his back (Bernotas, 1995). Another notable occurrence was the PGA being required to allow Casey Martin to ride in a golf cart during competition (*PGA Tour, Inc. v. Martin*, 2001).

Athletic administrators should make the decision as to whether an individual is otherwise qualified for a particular position in employment or to participate in a program on a case-by-case basis so that the accommodation can be tailored to the needs of the disabled individual. For example, in *PGA Tour, Inc. v. Martin* (2001) and in *Olinger v. United States Golf Association* (2000) two claimants with degenerative disorders that precluded them from walking long distances filed suit against the golf sanctioning bodies seeking to use a golf cart during tournament play. The outcomes of the cases were different. In Martin's case, the Supreme Court ruled that use of a golf cart was a reasonable accommodation that provided no competitive advantage (*PGA Tour, Inc. v. Martin*, 2001). In *Olinger* (2000), the appellate court ruled that using a golf cart served as an unreasonable accommodation as it would have a direct impact on the other tasks involving golf competition, such as fatigue and stress (*Olinger v. United States Golf Association*, 2000).

Reasonable accommodations do not detract from the event itself, but instead allow qualified individuals with a disability access to programming and facilities otherwise off limits to them. To some critics these exceptions may seem arbitrary and possibly open the door to other outrageous accommodations for the athlete with disability. The ideas that basketball goals may be lowered for athletes with a height impairment, that fins may be allowed for swimmers born without legs, that two bounces may be allowed in tennis for people with mobility disorders, or that the distance between bases may be reduced for baseball players with heart ailments are not likely. These alterations can and do upset the fundamental nature of the competition, and may even give the disabled athlete an advantage in play. Therefore, they are not likely to be allowed in competitive sport. Only accommodations that do not undermine the essence of the athletic competition are likely to be permitted (Stone, 2005). Athletic administrators should keep this in mind when considering the rules modifications that allow athletes with disabilities equal access to programs.

INTERCOLLEGIATE ATHLETICS

The role that intercollegiate athletics plays in a student-athlete's overall development cannot be overlooked. The relationship between athletic participation and academic performance is a much-researched topic in sport sociology. Research shows that high school athletes tend to have a slightly higher GPA than non-athletes (Eitzen & Sage, 1993; Snyder & Sprietzer, 1989). They also tend to develop aspirations for continuing education beyond high school (Snyder & Sprietzer, 1989). Participation in intercollegiate athletics helps student-athletes to maximize their learning and career potential while developing a successful career path in or out of professional sports. Athletics and education are sufficiently intertwined such that they constitute a major life activity for many student-athletes playing interscholastic or intercollegiate sports (Mitten, 1998).

CASE LAW

The two cases from the area of intercollegiate athletics to be explored under the issue of allowing athletes with physical abnormalities to participate in sport competition are *Pahulu v. University of Kansas* (1995) and *Knapp v. Northwestern University* (1996).

In *Pahulu v. University of Kansas* (1995) the public university's decision to prohibit a football player from playing college football after being medically disqualified by the team physician was upheld in court. After experiencing transient quadriplegia following performing a tackle, the team physician, with consultation from a

neurosurgeon, determined that Pahulu was at an extremely high risk of suffering irreparable harm, including permanent quadriplegia, if he continued playing college football. The university agreed to honor his scholarship, but prohibited him from playing football. After consulting other medical specialists who concluded that he was at no greater risk of permanent paralysis than any other player, Pahulu wanted to continue playing college football. Pahulu filed a Rehabilitation Act claim contending that he was being barred from participating in a major life activity. That is, his ability to learn was adversely affected by his exclusion from playing football.

The court first considered the plaintiff's claim that he had a physical impairment that limited a major life activity. The court recognized his narrow cervical canal as a physical impairment that limited his major life activity of learning through participation in intercollegiate football. However, since the university honored his athletic scholarship, allowing him continued access to all academic services, the court ruled that his exclusion from football did not substantially limit his opportunity to learn. Therefore, the court held that he was not disabled under the Rehabilitation Act.

Additionally, the court held that the student was not "otherwise qualified" because he could not satisfy all of the football program's requirements in spite of his disability, namely, medical clearance from the team physician to play football. In *School Board of Nassau Co., Fla. v. Arline* (1987) the Supreme Court held that to determine whether an individual is otherwise qualified, one's condition should be evaluated in light of medical evidence, and the decision should be based on reasonable medical judgments. In *Pahulu*, the court found that the team physician's "conservative" medical opinion was "reasonable and rational" and "supported by substantial competent evidence" for which it was "unwilling to substitute its judgment" (*Pahulu v. University of Kansas*, 1995, p. 480).

Another leading case concerning the issue of intercollegiate athletics as a major life activity is *Knapp v. Northwestern University* (1996). As a high school senior, Nicholas Knapp suffered sudden cardiac arrest during a recreational basketball game and required CPR and defibrillation to restart his heart. Knapp had an internal cardioverter defibrillator implanted in his abdomen to regulate his heart rate. He continued to play recreational basketball for two years without incident, and received medical clearance from three cardiologists to play college basketball. Northwestern University agreed to honor its scholarship with Knapp, but on the advice of its team physician, adhered to a medical disqualification from intercollegiate basketball based on the conclusion that Knapp exposed himself to significant risk of ventricular fibrillation or cardiac arrest during competition.

Knapp sued the university on the basis that he was disabled under the Rehabilitation Act, and that its refusal to allow him to play basketball substantially limited a major life activity. For Knapp, intercollegiate basketball was a major life activity because it was an important aspect of his educational and learning experience. The lower court held that Knapp was disabled under the Rehabilitation Act because of his physical impairment. Medical experts disagreed on whether the risk of injury to Knapp was substantial enough to justify his exclusion from intercollegiate basketball. After hearing expert medical testimony, the court held that Knapp's risk of injury was not medically substantial and that his heartbeat could be restored to normal by the implanted defibrillator. Since Northwestern disallowed Knapp from practicing with the team and competing in games, the trial court held that Northwestern's refusal to allow Knapp to play substantially limited his ability to learn through playing college basketball.

However, on appeal, the Circuit Court reversed and remanded the case stating that Knapp's condition could not be considered a disability under the Rehabilitation Act. Although medically ineligible, Knapp did not meet the legal definition of disabled because he was not substantially limited in a major life activity (i.e., learning). Northwestern's decision to deny Knapp the opportunity to play did not deprive him of a major life activity; rather it protected him from a risk of death (Hekmat, 2002). The court ruled that learning was the affected major life activity, not basketball play, consistent with *Pahulu* (1995), and the court held that Knapp was not disabled because playing intercollegiate basketball is not considered a major life activity. Learning was "only one part of the education available to Knapp at Northwestern" (*Knapp v. Northwestern University*, 1996, p. 480), and did not limit his ability to learn.

Not everyone values athletics in the same way as walking, breathing, and speaking. Preventing someone from playing intercollegiate basketball does not mean that he or she has not learned. The appellate court, thus, applied an objective, rather than subjective, standard as to whether sport participation is critical to one's learning by considering the weight that the average person puts on competitive athletics, not just how the individual considers athletic competition.

The court held that a university may establish legitimate physical qualifications (i.e. pre-season physicals, consent waivers) for an individual to satisfy in order to participate in its athletic program (Mitten, 1998). In *Knapp*, rather than challenge the rationale of the university's expert medical opinions, the court re-framed the issue as a question of who should make this assessment. The court ruled that if the university has reviewed the medical evidence with "reason and rationality and with full regard to reasonable accommodations", then "the university has the right to determine that an individual is not otherwise medically qualified to play without violating the Rehabilitation Act" (*Knapp v. Northwestern University*, 1996, p. 480).

DISCUSSION

The previous cases demonstrate that courts realize the value of athletics in many students' educational experiences, but that playing intercollegiate sport is not in and of itself a major life activity. The courts applied a balancing test that considered the athlete's interest in sport participation with the institution's interest in protecting the health and safety of the participants. Playing intercollegiate sports did not pose a direct threat to other competitors, team personnel, or spectators, however, it did pose a direct threat to the athletes' own individual health and safety. Neither the Rehabilitation Act nor the Americans with Disabilities Act addressed the question of whether harm to oneself should preclude an otherwise qualified individual from access to programming or employment. Drawing on the reasoning applied in *Arline* (1987), the courts in *Pahulu* (1995) and *Knapp* (1996) held that the severity of the potential injury was high—paraplegia or death—and therefore the student-athletes were not otherwise qualified to participate because they did not receive medical clearance to play.

In a more recent ruling, the Supreme Court clarified the "direct threat" defense in *Chevron v. Echazabal* (2002), ruling that a disability that endangers an employee's own health is not extended coverage under the ADA. This allowed employers to impose a requirement that prohibited individuals with disabilities from working if their disability posed a direct threat to themselves, regardless of the threat posed to other individuals in the workplace. The ADA defined direct threat as significant risk to the health or safety of others which cannot be eliminated by reasonable accommodation (Americans with Disabilities Act, 1990). With this ruling, the employee's safety supercedes the employee's right to work. Applying this Supreme Court reasoning to the *Pahulu* (1995) and *Knapp* (1996) courts, both courts made the correct ruling in protecting the student-athletes from a self-imposed threat. This case from the employment context is likely to be applied to other similarly-situated athletes in the future (Walker, 2005).

While administrators should be aware of the direct threat defense, they should also be aware of the three tests to use when analyzing whether intercollegiate athletics should be considered a major life activity (Zumpano, 2002). When balancing the institution's interest against the student-athlete's overall experience, the courts use "an objective test as to the average person" (p. 7), which allows courts to prevent athletics from being classified as a major life activity for everyone. The objective test as to the average person, used in *Pahulu* and *Knapp*, is the more practical approach, weighing the costs associated with reasonably accommodating the student-athlete while considering that the average person does not typically value competition as much as the individual student-athlete bringing the suit (Zumpano, 2000). Zumpano (2002) also described a more subjective test that focuses on an individual's feelings towards the role of athletics, called "the objective standard as to the individual" (p. 7). This test is not used because it would allow any activity to be ruled a major life activity just because the person said so. The objective test to the individual acknowledges that athletics may be a major life

activity for some individuals. Courts must measure the importance of athletics for the individual student-athlete on an individualized basis. Here, the focus is on the athlete and the individual's interests take priority.

Athletic administrators faced with making decisions regarding the participation of an athlete with a physical abnormality should be careful when only considering the weight that sport participation holds in the athlete's life. For instance, just because a large part of the athlete's identity is tied to athletics, and that removing this part of his/her identity interferes with him/her in such a way that it interferes with learning, does not mean that it legally qualifies as a major life activity. The administrators should consider the weight athletic participation holds for the average person, not just the individual. In *Toyota Motor Manufacturing v. Williams* (2002), the Supreme Court ruled unanimously that major life activities are basic tasks "central to daily life," not just tasks of a particular job. Thus the *Knapp* decision was supported by the Supreme Court ruling that playing a particular sport is not a major life activity covered by the ADA.

The key issue to arise from the *Knapp* case was "Who should decide whether to allow a physically impaired athlete to participate in athletics?" Does the decision belong to the sponsoring institution, the team physician, the athlete's physician, the athlete's family (if a minor), or, ultimately, the student-athlete? The question of allowing athletes with physical abnormalities to play raises issues of free will, medical ethics, and legal liability. Kranhold & Helliker (2006) asked "What's the difference between competing with a heart defect and pursuing risky adventures like climbing Mount Everest?" (p. 1). Should medical professionals, including athletic trainers, instruct consenting adults not to play sports? Should athletes in pursuit of a professional career and following their passion to play sports be allowed to make that decision? Should the institution impose its jurisdiction on an athlete's personal decision, even with liability waived? As long as the decision to prohibit athletic participation is based on sound medical judgment and not based on fear or paternalistic good intentions, the institution's decision will be supported in court (Weston, 2005).

Mitten (1998) described three models of decision-making regarding the issue of medical assessment that have been adopted by the courts. In *Knapp*, the court used the judicial/medical fact-finding model to settle conflicting medical testimony regarding the question of whether the student-athlete's condition created a risk of substantial injury while participating in the sport. In this model the court that determines if there is a legitimate basis for medically disqualifying someone from practice or competition. The athlete informed consent model allows the athlete to decide to participate if given clearance by a medical authority. The athlete, however, must waive any potential legal claims against the educational institution or event sponsor for any injury occurring as a result of the physical impairment. Finally, the team physician model allows the educational institution to exclude an athlete if medically disqualified by the team physician. This model places legitimate health and safety concerns above an athlete's personal independence, but may lead to conflicts of interest for the team physician.

In both court cases, the courts failed to address whether the university can reasonably accommodate the student-athletes. Assuming that a reasonable accommodation can be made, they did not address the individual costs in accommodating the athletes. A reasonable accommodation is one that does not fundamentally alter the nature of the program or create an undue financial burden for the institution. Zumpano (2002) provided the examples of purchasing emergency equipment specific to the disorder, the presence of emergency personnel at practices and competitions, and alterations in conducting team practices as possible reasonable accommodations. The student-athletes may argue that these added costs are minimal and standard auxiliary aids and that the alteration of practice for a person with a heart defect is no different than altering practice for a person with a minor sprain. Administrators, however, may argue that these aids and alterations may create an undue financial burden on the institution, and thus be unreasonable. Again, this requires a case-by-case evaluation.

Finally, both the *Pahulu* and *Knapp* cases occurred prior to three landmark Supreme Court rulings: *Sutton v. United Air Lines, Inc.* (1999), *Murphy v. United Parcel Service, Inc.* (1999), and *Albertson's Inc. v. Kirkingburg* (1999), commonly referred to as the *Sutton* trilogy. The central holding of the *Sutton* trilogy is that determinations of whether a person is disabled should be made with "reference to measures that mitigate the individual's impairment" (*Sutton v. United Air Lines, Inc.*, 1999, p. 475). Such "mitigating measures" may include eyeglasses, artificial limbs, medication, and a heart defibrillator, among others. Thus, considering the mitigating measure of a defibrillator that regulates an athlete's heartbeat, making a case for the individual as being disabled becomes more difficult. Today, under the *Sutton* trilogy, athletes like Knapp may not meet the legal definition of disabled simply because their defibrillator regulates their heart rate such that they can no longer be considered as having a physical impairment.

CONCLUSIONS

The Rehabilitation Act and the Americans with Disabilities Act apply to individuals who have been unjustly treated because of a disabling condition. Their purpose is to integrate individuals with disabilities into society and allow them fair and equal treatment in all aspects of society. The purpose of this paper was to provide athletic administrators (specifically in intercollegiate athletics) with a basic understanding of the issues regarding the question of sport participation for individuals experiencing physical abnormalities. Legal terms and two leading cases regarding the issue were presented. Although in the two cases presented the claimants did not win their battle to be reinstated to intercollegiate athletic competition, future suits may have very different outcomes, as each case's merits is evaluated individually, as discussed in the following paragraphs.

It is difficult to deny that athletic participation provides an avenue for learning in a variety of unique ways. Many virtues can be learned through athletics that may not be so easily attained in other parts of society. Thus, in utilizing the objective test as to the individual, as described by Zumpano (2002), courts acknowledge that intercollegiate athletics may be a major life activity for some student-athletes. Since neither the Rehabilitation Act, the ADA, nor other federal guideline provides an exhaustive list of major life activities, each court is left to determine what constitutes a major life activity on a case-by-case basis. One essential point courts consider in their ruling is "significance" (Edmonds, 2002), therefore, one could argue that athletics significantly contributes to an individual's social, emotional, and educational growth. A case-by-case analysis leaves the door open for courts to rule in favor of the claimant.

In *Knapp* (1996), the court favored the judicial/medical fact-finding model to settle conflicting medical evidence regarding the student-athlete's overall risk of injury. It could have ruled that the claimant's medical evidence favoring participation outweighed the university's medical evidence for excluding the student-athlete. The court in *Olinger v. USGA* (2000), after hearing medical testimony from both sides, accepted the USGA medical expert's testimony while citing an insufficient show of reliability to scientific principles from Olinger's medical expert (Waterstone, 2000). Administrators who bar a disabled student-athlete from competition should base their decision on reasonable medical judgment, and not out of a paternalistic fear of injury or death.

What does all this mean for the athletic administrator faced with a student-athlete with a disabling, and possibly life-threatening, condition who wants to compete in intercollegiate athletics? First, the administrator should be well-versed in the criteria necessary to be considered disabled under either the Rehabilitation Act or the ADA.

Second, the student-athlete's own interests should be considered against the interests of the institution. If the athlete places a significant amount of weight on athletics as a learning tool, and the institution can reasonably accommodate the individual, then perhaps this objective approach as to the individual that promotes diversity in the athletic setting is the best choice for all. However, courts applying the balancing test may reach divergent conclusions when comparing the significance of sport participation to the athlete versus the interests of the institution.

Third, the student-athlete's risk to self and to others should also be considered, compliant with the *Chevron* (2002) court's ruling. If harm to oneself is a factor, regardless of the threat of injury to others, then the institution may legally bar the athlete from participation. Also, if there is risk to the health and safety of others that cannot be eliminated by a reasonable accommodation, the athlete may be barred from participation.

Fourth, administrators who decide to bar a student-athlete with a disability or medical condition from competition should have substantial medical evidence to support their decision. After reviewing the medical evidence, if an organization decides to allow a disabled individual to participate in competition, then the athlete should be fully informed of the risks of playing in regard to his or her physical condition. The organization should also be sure to have a signed consent waiver to minimize potential legal liability.

Fifth, the purpose of eligibility requirements and rules of competition should be explained. When this is not enough, proof that accommodating the individual would fundamentally alter the nature of the program or cause an undue burden on the institution should be prepared. If modifications can be made to the rules or program in ways that otherwise protect an individual from harm to self or to others, then these should be considered.

Recreation league, intramural league, interscholastic and intercollegiate program administrators should consider the program's expectations before barring an individual from competition. If the purpose of the competition is for leisure, improved fitness, or recreational activity, perhaps allowing a reasonable accommodation or a moderate rule of compliance is the best solution for all, as long as the athlete does not gain an unfair advantage. This solution serves to meet the interests of the disabled individual and provides fair and equitable treatment to all athletes.

Additionally, it should be noted that the courts in *Pahulu* (1995) and *Knapp* (1996) ruled that learning, not intercollegiate sports participation, was the affected major life activity. Thus, claims of discrimination are not necessarily limited to intercollegiate athletics. Administrators in high school and middle school sports, intramural competition, and even private sports leagues are susceptible to similar claims. Administrators should bring together specialists in athletic training, medicine, law, athletic administration, and disability education to develop and adopt a set of policies and procedures to deal with the disabled student-athlete that ensures each case will be reviewed on a case-by-case basis and that each athlete will receive full protection under federal disability law.

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