

CHAMPIONSHIP TIME STANDARDS DISQUALIFY DISABLED ATHLETES

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In the case of *A.H. v. Illinois High School Association*, 881 F.3d 587, 2018 U.S. App. LEXIS 2708 (7th Cir. 2/2/2018), a disabled athlete requested "the Illinois High School Association (IHSA) create a separate division with different time standards for para ambulatory runners in the Sectional and State championship track meets, as well as the annual 5K Road Race." The IHSA denied these requests, and plaintiff A.H. brought a lawsuit alleging he had been discriminated against on the basis of his disability in violation of the Americans with Disabilities Act (ADA). 42 U.S.C. §§ 12132, 12182(a).

FACTS OF THE CASE

A.H., a senior at Evanston Township High School, was a member of the school's track and field team despite his physical limitations from spastic quadriplegia related to cerebral palsy. A.H. had been a three-sport athlete in cross country, swimming, and track and field at Evanston Township High School since his freshman year.

A.H. was classified by the International Paralympic Committee (IPC) as a T-36 disabled athlete, meaning that his disability impairs his muscular control, balance, coordination, and range of motion. In particular, A.H. has limited coordination in both his legs and arms, and has limited range of motion in his hips, knees, and ankles. Thus, his disability hinders crucial parts of his body that are essential for running.

A.H. was a full member of the track and field team, and he had never been prevented by his school or the IHSA from being on the team or participating at individual school meets. In fact, A.H. never missed a track meet in his high school career. He was fully embraced and respected by both his coaches and teammates. Moreover, A.H. was considered an elite athlete within the disabled athletic community, as he competed at the U.S. Paralympic Trials in 2016.

ADA ACCOMMODATION POLICY

The IHSA is a not-for-profit voluntary association which organizes and regulates interscholastic high school athletic events throughout Illinois. It consists of 810 public and private member high schools, more than 90% of the high schools in Illinois. The IHSA's Board of Directors is comprised of ten principals from its member high schools who have the final authority on the overall operations and rules; an Executive Director of the IHSA oversees the day-to-day operations.

The Executive Director has complete authority to decide accommodation requests, which can be brought by member schools, or by an individual. There is no published criteria that the Executive Director consults when evaluating such requests. The Executive Director's ruling on an accommodation request can be appealed to the ten-member Board, which will hold a hearing with the student-athlete and other relevant parties.

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The IHSA maintains an "Accommodation Policy for Students with Disabilities," which provides:

It is the policy of the IHSA to provide students with disabilities full and equal opportunities to be integrated in IHSA interscholastic sports and activities whenever possible. IHSA recognizes and adopts the definition of disability as provided within the ADA. The IHSA will not discriminate against students with disabilities on the basis of disability in its services, programs, or activities.

The IHSA has implemented this policy through divisions within particular sports for student-athletes with disabilities. These divisions have included a para-ambulatory division at swim meets, and a wheelchair division at track and field meets. The IHSA, however, did not have a para-ambulatory division for runners like A.H. in the track and field meets it regulates.

ONLY TEN PERCENT QUALIFY

While the IHSA did not organize or regulate individual school meets throughout the track and field season, it did manage the two most important track meets: the Sectional meet and the State championship meet. In order to qualify for the State championship meet ("State"), a runner had to place first or second in their event, or attain a particular qualifying time at the Sectional meet.

Runners who competed at State could achieve points for their team to determine which team won the overall State championship. The IHSA does not preclude any runner from participating at Sectionals, as individual track and field teams determine who runs in the events. A.H. had ran the 1600 meter race for his team at Sectionals in the Spring of 2017.

By design, the State qualifying times established by the IHSA at the Sectional meet preclude thousands of able-bodied runners from qualifying for State each year. Approximately 10% of all runners on IHSA-member track and field teams qualify for State.

ADA ACCOMMODATION REQUESTS

A.H. could not possibly attain any of the qualifying times for State. In fact, world record holders in the T-36 classification would be unable to achieve any of the qualifying times. Accordingly, on September 26, 2015, A.H., on an individual basis, submitted the following three accommodation requests to the IHSA:

- (1) IHSA create separate para-ambulatory time standards for the Sectional and State meets in the 100, 200, 400, and 800 meter races; (2) IHSA create a para-ambulatory division in the annual 5K Road Race; and, (3) A.H. be allowed to use a modified starting block in the 100, 200, and 400 races.

In his first accommodation request, A.H. recommended IHSA adopt the Louisiana High School Athletic Association (LHSAA) qualifying times for para-ambulatory runners. A.H. had recorded personal best times in the 100, 200, 400, and 800 that would qualify him for State under the LHSAA qualifying times.

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CIVIL RIGHTS OFFICE GUIDANCE

On October 8, 2015, the Executive Director granted A.H.'s third request for a modified starting block, but he denied the first two requests. In so doing, the Executive Director determined these accommodation requests were "not reasonable" because A.H. "currently has the same opportunity to compete in track and field as his nondisabled peers."

In reaching this determination, the Executive Director relied on guidance from the U.S. Department of Education Office of Civil Rights (DOE OCR). DOE OCR noted in a letter to school officials that students with disabilities must be provided access to extracurricular activities, but schools were under no obligation to create separate or different activities for the disabled.

On October 25, 2015, A.H. appealed the Executive Director's ruling. The IHSA Board held a hearing on December 14, 2015, and sustained the Executive Director's decision to deny the requests. The Board noted that A.H. was already part of the team, and that being a part of the team was a greater intangible benefit than participating at State. Moreover, the Board emphasized that the IHSA's goal is to integrate disabled athletes with able-bodied athletes rather than separating them. Finally, the Board concluded that granting A.H.'s request would provide him an unfair competitive advantage because he would have a greater opportunity to advance to State and earn points for his team.

ADA CLAIM

A.H. filed his lawsuit in federal district court on February 4, 2016 seeking injunctive relief to compel the IHSA to adopt the separate para-ambulatory qualifying times and divisions at the Sectional and State track meets, as well as the Road Race. The complaint alleged that IHSA's refusal to adopt these accommodations amounted to impermissible discrimination against disabled individuals in violation of the ADA.

After discovery, the district court granted summary judgment in favor of the IHSA. The district court found that A.H. could not show that the alleged discrimination had occurred on the basis or by reason of his disability. Even if A.H. had presented such evidence of discrimination on the basis of disability, the district court found his accommodation requests were not reasonable because the requested accommodations would fundamentally alter the nature of the IHSA's track and field competitions. A.H. appealed.

ON THE BASIS OF DISABILITY

As cited by the federal appeals court, in pertinent part, the ADA provides protections against discrimination for disabled individuals in any public entity, as well as places of public accommodation:

No disabled individuals shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of

a public entity, or be subjected to discrimination by any such entity.

No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation.

In this particular instance, the appeals court acknowledged the "benefits desired" by A.H. was "to qualify for State."

As noted by the court, the ADA prohibits discrimination against individuals "by reason of" the disability, or "on the basis of" the disability. Accordingly, the court found A.H. had to prove "but for his disability, he would have been able to access the services or benefits desired."

In other words, to establish the necessary "but for" causation, i.e., discrimination solely on the basis of disability, the appeals court found A.H. would have to demonstrate that his physical disability alone prevented him from achieving the qualifying times that would have allowed him to qualify for State.

The appeals court found A.H. already had "an opportunity to participate and run in the Sectional meet, but his disability impacts his ability to achieve the qualifying times necessary to qualify" for State. Accordingly, A.H. had requested IHSA "establish different qualifying times for para ambulatory runners that will allow him to qualify for State."

NOT ON THE BASIS OF DISABILITY

In the opinion of the federal appeals court, disabled runners, like A.H., were not necessarily "unable to attain these qualifying times for State" simply "by reason of" or "on the basis of" their disability." On the contrary, the appeals court found the qualifying times simply "ensure that the State championship meet is reserved for the best and fastest runners in Illinois." As a result, the appeals court acknowledged: "The odds are overwhelming that runners like A.H. would not meet the qualifying times even if they were not disabled":

The IHSA qualifying time standards are designed to make the individual races extremely competitive, purposely excluding a great-majority of runners from reaching State. The demanding qualifying times established by the IHSA exclude able-bodied and disabled runners alike, leaving 90% of all runners, many thousands, in fact, from participating at State every year.

To demonstrate ADA discrimination, A.H. had argued that "the world record holders in his T-36 classification" could not meet the IHSA's qualifying times. The federal appeals court, however, found the ADA causation analysis, i.e., discrimination solely on the basis of disability, would depend on whether A.H. would necessarily qualify for State if he were "not disabled."

The fact that A.H. does not have a chance to qualify as a disabled runner does not establish that the qualifying standards set by the IHSA are the but-for cause of his failure to qualify for State. While A.H. is a gifted runner given his disability, A.H. has not established that, were he not disabled, he would be among the 10%

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of track and field athletes that qualify for State each year.

REASONABLE ACCOMMODATION?

As noted by the federal appeals court, the ADA also imposes a duty to provide reasonable accommodations to disabled individuals. In this particular instance, A.H. had requested the IHSA to create "a para-ambulatory division, with qualifying time standards that are better suited for runners like him, at the Sectional and State championship meet, as well as the Road Race." The issue before the federal circuit court of appeals was, therefore, whether the requested accommodation was "reasonable" under the ADA.

As cited by the court, "an accommodation is unreasonable if it imposes significant financial or administrative costs, or it fundamentally alters the nature of the program or service."

A.H. had claimed his requested accommodations would not impose such financial or administrative burdens on IHSA. In so doing, A.H. had noted "the IHSA already has separate divisions in track and field for female runners, wheelchair athletes, and runners from smaller schools."

FUNDAMENTAL ALTERATION OF COMPETITION

According to the appeals court, IHSA had never claimed "creating a para-amulatory division would be burdensome in this way," i.e., imposing significant financial or administrative costs. Instead, IHSA claimed "A.H.'s lower qualifying time standards would undermine the competitiveness of the State championship meet and the Road Race." Specifically, IHSA argued implementation of A.H.'s proposed accommodations would "fundamentally alter the nature of the State championship track competition and Road Race because they would guarantee A.H. increased participation and success."

In response, A.H. claimed he was "not seeking lower time standards for all runners, but rather the creation of a para-ambulatory division." The appeals court rejected this argument

The fact that A.H.'s proposed accommodations would not affect the qualifying times of able-bodied runners is of no consequence. The creation of a new division would lower the current qualifying times and make it easier for certain runners to qualify for State or medal in the Road Race.

Citing U.S. Supreme Court precedent, the federal appeals court recognized: "lowering particular eligibility or qualifying requirements established by an entity can be substantial modifications that are unreasonable." In particular, the appeals court acknowledged that "a fundamental alteration" of a sporting event "occurs either through a significant change that affects all athletes alike, but alters an essential aspect of the game; or, through a peripheral change that gives a disabled athlete an advantage over others."

According to the IHSA, "the qualifying time standards ensure a certain level of competition and maintain a necessary scarcity of opportunity." The appeals court agreed. In the opinion of the

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court, a new division of runners with lower qualifying times for State "would fundamentally alter the essential nature of the Sectional and State track and field meets, as well as the Road Race."

The essential nature of a track and field race is to run a designated distance in the shortest time possible. The IHSA's time standards, which govern which runners can qualify for the State championship, underscore the essence of the sport: one must run as fast as possible to achieve the predetermined times.

A.H. conceded his disability affects his running skills and his ability to compete with able-bodied runners at the Sectional meet. In his accommodation request to the IHSA, however, A.H. had proposed adopting the LHSAA qualifying times for the para-ambulatory division, all of which A.H. has easily accomplished and would assure that A.H. qualifies for State.

As characterized by the appeals court, "A.H. clearly seeks an accommodation that would make him competitive and allow him to achieve results he currently cannot achieve." The appeals court, however, determined A.H.'s accommodation requests were "unreasonable as a matter of law" because "the ADA does not require the IHSA to alter the fundamental nature of their track and field events."

A.H. currently has the opportunity to compete in the Sectionals meet in order to qualify for State, as well as an opportunity to compete for a medal in the Road Race. The IHSA guarantees A.H. this equality of opportunity, and by all accounts, A.H., his teammates, and coaches have benefitted tremendously from his participation on the track and field team. However, the IHSA is not required under federal law to guarantee A.H. the results he desires from those opportunities.

As a result, the federal appeals court affirmed the federal district court's grant of summary judgment in favor of the IHSA.

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