

- 1  TRACK CHAMPS POINTLESS FOR WHEELCHAIRS
- 2  application of a neutral rule that applies equally to disabled and non-disabled individuals cannot be considered discrimination on the basis of disability
- 3  ADA would be violated if an otherwise neutral rule is applied in a manner which is a mere pretext for discrimination on the basis of disability.

#### 4 INTEGRATION & SEPARATION

*McFadden v. Grasmick*  
(Dist. Md. 2007)

- 5  wheelchair athlete claimed that she was illegally discriminated against when the rules for assigning team points in a statewide track and field competition precluded her from earning points for her team
- 6  plaintiff Tatyana McFadden was a junior and a member of the track team at Atholton High School ("AHS") in Howard County, Maryland
- 7  spina bifida and has been paralyzed from below her waist since early childhood  
uses a wheelchair for mobility
- 8  has developed into a highly skilled "world class" and Olympic wheelchair racer

- 9  response to an earlier lawsuit against Howard County permitted to race alongside non-disabled racers in so-called “mixed races” wherein wheelers and non-wheelers do not compete against each other.
- 10  earn individual and team points based on her participation in races sanctioned by Howard County.
- 11  unable to persuade state track and field officials to adopt the Howard County points system, or any other system, permitting her to earn points for her team.
- 12  sued officials responsible for operating the statewide system of track and field competition in Maryland claiming violations of the Americans with Disabilities Act (ADA).
- 13  “whether ‘mixed racing’ is required by disability rights laws, and whether wheelers must be awarded team points.”
- 14  defendant Maryland Public Secondary Schools Athletic Association (“MPSSAA”)
- 15  sets standards for competition to which all public schools must adhere in order to engage in interscholastic athletics.
- 16  wheelchair athletes had been allowed to compete in, and to earn team points in, certain field events, i.e., discus and shot

put.

- 17  2006, a wheelchair race was conducted for the first time in a Maryland state competition  
2006, McFadden participated in four track events at regional and statewide track and field tournaments
- 18  not permitted to earn points for her team in any of these races.
- 19  unlike other competitors, McFadden's name was not announced as she crossed the finish line, and her name was not illuminated on the score board when she finished her races.
- 20   
State Superintendent of Schools and the Secretary of the Department of Disabilities established a "Work Group to Review the Participation of Students with Disabilities in Athletics."
- 21  23 of 34 state high school associations reported having no wheelchair competition in track and field;
- 22  \* 4 of the 9 states reported having wheelchair athletes compete against one another at the state meet;
- 23  \* 2 states reported providing events for wheelchair athletes as exhibitions;
- 24  \* 1 state reported allowing athletes using wheelchairs to participate with non-disabled athletes in shorter events; such as

the 100 and 200 and 400 meter events;

- 25  \* 1 state allows athletes in wheelchairs to compete with other students during the regular season, but none have met the qualifying times to enter the state meet.
- 26  2007, MPSSAA added 12 wheelchair racing events to the 2007 Spring Tournament, six races for boys and six for girls
- 27  188 secondary schools in Maryland were divided into four classes, 1A, 2A, 3A, and 4A, based on the number of students attending a school.
- 28  students and teams only competed against students and teams in their class.
- 29  wheelchair races, however, were contested on a statewide, rather than a class basis
- 30  three wheelchair racers, including McFadden, competed as a separate "class" without earning points for their team.
- 31  MPSSAA had decided not to award team points for wheelchair races to "ensure competitive fairness and equity in team scoring,"
- 32  NEUTRAL RULE

- 33  MPSSAA claimed the decision not to award team points for wheelchair races was “fully consistent with MPSSAA's general policy regarding new team events,”
- 34  “40% rule”:
- 35  "new team event" is added to state-sanctioned tournaments, the results of such an event do not earn team points in the determination of team championships
- 36  until high schools representing at least 40% of the jurisdictions in a particular class participate in that event during the regular and post season
- 37  MPSSAA, the 40% Rule had been applied to diving and pole vaulting competitions.
- 38  diving, only a “handful of high schools in one class of schools added diving events to their swimming team's repertoires”
- 39  insufficient number of schools with diving to satisfy the 40% Rule
- 40  “diving competitors at schools participating in the state swimming championships did not earn points for their teams.”
- 41  diving events were made a part of the statewide swimming competition as “exhibitions.”

- 42  dramatic reduction” in the number of schools participating in pole vaulting, application of the 40% Rule resulted in similar changes in high school pole vault events.
- 43  McFadden, however, petitioned the federal district court to issue “a prohibitory injunction forbidding defendants from declining to award her ‘one point’ for the successful completion of her events at the up-coming state competitions.”
- 44  MPSSAA had failed to formulate a “point system that would permit her to do so [i.e., earn one point] in this Spring's state championships, arguably the most important part of the season.”
- 45  acknowledging the desirability of awarding team points to participants in wheelchair races, MPSSAA claimed that they had “not yet figured out how to do it in a fair and equitable manner”:
- 46  ensure that the few teams with wheelchair athletes are not given an unwarranted advantage in the quest for team championships.
- 47  MPSSAA emphasized that fact that McFadden’s high school was the only school with a “girl wheeler” and “only two schools in Maryland have wheelchair racers.”

48  McFadden claimed that such disparities among schools were frequent because schools are oftentimes unable to furnish participants for particular events and, therefore, unable to score points in those events.

49  McFadden, such disparity was inherent in “the nature of team events” because all teams have “strengths and weaknesses,” including weaknesses for “teams that do not have participants in particular events.”

50  McFadden alleged that she was an otherwise qualified individual with a disability who was discriminated against on the basis of her disability in violation of the ADA.

51  McFadden contended that she was denied "full and meaningful participation" in defendants' athletic program because she was “not allowed to earn points for her team.”

52  EQUAL TREATMENT

53  whether McFadden was “being treated *less favorably on account of her disability.*” (*Emphasis of court*)

54  determine “whether the constraints on McFadden's ability to earn points for her team differ in any material, legally cognizable way from the constraints on the opportunity of similarly situated students.”

- 55  under the 40% rule, McFadden was “treated no differently than is any student at any school who participates in an event with insufficient participation.”
- 56  minimum percentage requirement embodied in the 40% Rule is neutral in intent and in effect,
- 57  as applied by defendants to withhold team points from McFadden's performances works no unlawful discrimination against her.
- 58  McFadden claimed that “the 40% Rule would operate as a justification to forever exclude her and other wheelchair racers because they will always be minorities and are unlikely ever to reach the required minimum.”
- 59  court acknowledged that “one aim of the disability rights statutes at issue in this case is to protect those with that particular ‘minority’ status because they have been historically stigmatized and excluded.”
- 60  court found that only one or two more schools in three of the larger school systems needed to offer wheelchair racing in order to satisfy the 40% rule.
- 61  *when a sufficient number of local school systems adopt a new sport or event at the varsity level that comprises the equivalent of 40% or 75 of the 186 member schools, the event can be elevated to the statewide tournament level.*

- 62  Howard County is the only jurisdiction offering varsity wheelchair racing, and even though only two schools in Howard County have competitors in wheelchair racing
- 63  MPSSAA will count all of Howard County's 12 secondary schools toward the 40% minimum needed to "elevate" wheelchair racing to an event for which team points are awarded.
- 64  court rejected McFadden's argument that "the 40% Rule will require that fully 40% of all of the state's secondary schools have wheelchair racers before wheelers will be permitted to earn points for their teams."
- 65  ESSENTIAL DIFFERENCE
- 66  intent and effect of the 40% Rule" to determine whether the Rule was being applied to "exclude, stigmatize, or diminish the contributions of disabled students
- 67  OR simply create "a fair and equitable system of racing competition designed to identify team rankings."
- 68  court noted "inherent and relevant differences between the class of wheelers and the class of non-wheelers."
- 69  court found that "wheelchair racers simply do not compete

against non-wheelers” because “the 'essential nature' of racing a wheelchair is different from the 'essential nature' of running.”

- 70  wheelchair races are “distinctly different athletic activities” from other running and jumping events in a track and field competition,
- 71  court rejected McFadden’s contention that she was entitled to “treatment identical to non-wheelers in respect to the ability to earn team points.”
- 72  court found McFadden had failed to establish that it was *discriminatory* under the disability rights statutes
- 73  for MPSSAA to “maintain a difference in the opportunity of wheelchair racers, in contrast to non-wheelchair racers, to earn points for teams.”
- 74  difference in opportunity was not on the basis of disability.
- 75  small number of teams with female wheelers (i.e. one participant, McFadden) precluded this “new team event” from earning points in state-sanctioned tournaments to determine team championships.
- 76  creation of the separate participation opportunity” is not in and of itself unlawful discrimination
- 77  court acknowledged that “the question becomes one of the effectiveness or equality of the separate benefit.”

78  court found that the effectiveness or equality of the separate benefit afforded to wheelers no different than that provided by MPSSAA to other “exhibition” sports like diving and pole vaulting.

79  court denied McFadden’s motion for a preliminary injunction which would have prohibited MPSSAA from “declining to award her one point for the successful completion of her events at the up-coming state competitions.”

80  Maryland Fitness and Athletics Equity for Students with Disabilities Act

May 13, 2008

81  requiring county boards of education to ensure that students with disabilities have equal opportunities to participate in physical education programs

82  try out for and, if selected, to participate in mainstream athletic programs;

83  providing for exceptions; requiring county boards to provide specified accommodations;

84  requiring county boards to develop specified policies and procedures;

85  requiring county boards to provide opportunities for students with disabilities to participate in specified competition