

LEAGUE POLICY BANNING COACH IN WHEELCHAIR FROM SIDELINES VIOLATED ADA

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The Americans with Disabilities Act (ADA) provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, State and local government services, and telecommunications. In pertinent part, Title II of the ADA mandates "nondiscrimination on the basis of disability in state and local government services," including public park and recreation facilities and programs. The Justice Department has issued federal regulations implementing Title II of the ADA, effective January 26, 1992 (28 CFR Part 35). As noted in these regulations, most government services, including public park and recreation agencies, were already subject to the nondiscrimination mandates of the ADA.

Most programs and activities of State and local governments are recipients of Federal financial assistance from one or more Federal funding agencies and, therefore, are already covered by section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794) ("section 504"), which prohibits discrimination on the basis of handicap in federally assisted programs and activities.

As noted in the *Anderson* decision described below, individuals with disabilities must be provided equal access to recreation facilities, programs and services, unless such participation poses a "direct threat" to the health and safety of others. Within the context of the ADA, "direct threat" is a "significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services."

Although persons with disabilities are generally entitled to the protection of this part, person who poses a significant risk to others will not be "qualified," if reasonable modifications to the public entity's policies, practices, or procedures will not eliminate that risk.

On the other hand, an agency's determination that an individual "poses a direct threat health or safety may not be based on stereotypes about effects of particular disability." The *Anderson* opinion described herein provides an example of such illegal discrimination, based upon unfounded safety concerns and perceived limitations of an individual in a wheelchair.

Don't Let Me Down

In the case of *Anderson v. Little League Baseball, Inc.*, 794 F.Supp. 342 (Dist. Ariz. 1992), plaintiff Lawrence Anderson alleged that the defendant Little League Baseball, Inc. violated the Americans with Disabilities Act (ADA) by adopting the following policy regarding "base coaching":

[C]oach in wheel chair may coach from the dugout, but cannot be in the coaches box. Little League must consider the safety of the youth playing the game, and they should not have the added concern of avoiding a collision with a wheel chair during their participation in the game.

In his complaint, Anderson alleged that Little League Inc. "adopted this policy to prevent him from participating on the baseball field during the 1991 season-end tournament." The facts of the case were as follows:

Anderson, who is confined to a wheelchair due to a spinal cord injury, has coached Little League Baseball for the past three years as an on-field base coach... According to Anderson, the local Little League refused to enforce Little League, Inc.'s policy. Anderson's team was eliminated early from the 1991 tournament. Little League, Inc. did not actively pursue the policy at that time. Thereafter, the State District Administrators of Little League voted to oppose the policy and seek its reversal, and District Administrator Mike Kayes urged Little League, Inc. to reconsider the policy. Other persons associated with Little League also encouraged Little League, Inc. to reconsider the policy.

Throughout the course of the 1991-1992 regular season, the local Little League refused to enforce the policy banning wheelchairs from the coaches box and allowed Anderson to continue serving as an on-field base coach. Recently, Anderson complains, Little League, Inc. has attempted to require local Little League officials to exclude Anderson from the field by threatening revocation of charters and tournament privileges. Little League, Inc.'s recent actions have led Anderson to believe that Little League, Inc. will not allow him to coach on the field during the 1992 season-end tournament which begins on July 8, 1992. Anderson was selected to coach the All-Star team in the tournament. Moreover, Anderson is concerned that Little League, Inc. will attempt to prevent him from coaching on the field next year.

Anderson asked the federal district court to prohibit "Little League, Inc. from preventing him from participating fully, coaching on the field, or otherwise being involved to the full extent of his responsibilities as coach." In addition, Anderson requested that the federal court enjoin Little League, Inc. "from intimidating or threatening players, parents of players, coaches, officials, umpires, or other persons involved in Little League Baseball and from attempting to induce them to boycott games because of Anderson's participation."

Nowhere Man

Enacted on July 26, 1990, the federal district court described the "Americans with Disabilities Act" as follows:

In passing the Act, Congress recognized that one or more physical or mental disabilities affect more than 43,000,000 Americans whom society has tended to isolate and segregate because of their disabilities. See 42 U.S.C. § 12101(a)(1) and (2). Such discrimination exists in the areas of employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services. 42 U.S.C. § 12101(a)(3). Disabled individuals experience not only outright intentional exclusion, but also the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modification to existing facilities and practices, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities. 42 U.S.C. § 12101(a)(5).

In addition, the federal district court noted that the ADA, specifically "Subchapter III--Public Accommodations and Services Operated by Private Entities, which became effective on January 26, 1992," provided as follows:

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 by any person who owns, leases (or leases to), or operates a place of public accommodation. 42 U.S.C. § 12182(a).

The term "public accommodation" includes any gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation which affects interstate commerce. 42 U.S.C. § 12181(7)(L).

The court further cited the following legislative history of the ADA indicating Congress' intent to ensure "full participation in and access to all aspects society" for individuals with disabilities

Many disabled people lead isolated lives and do not frequent places of public accommodation. The extent of non-participation of individuals with disabilities in social and recreational activities is alarming. The United States Attorney General has stated that we must bring Americans with disabilities into the mainstream of society.

In this particular instance, Anderson alleged that "public accommodation" within the context of the ADA "included Little League Baseball and its games." Specifically, Anderson contended that Little League, Inc. was "subject to the provisions of the Americans with Disabilities Act because they 'own, lease (or lease to), or operate a place of public accommodation' within the meaning of the Act."

I Don't Want to Spoil the Party

"Despite its prohibition against discrimination in public accommodations," the federal district court acknowledged that Subchapter III of the ADA provided the following exception for participation which poses a "direct threat" to the health or safety of others:

Nothing in this subchapter shall require an entity to permit an individual to participate in or benefit from the goods, services, facilities, privileges, advantages and accommodations of such entity where such individual poses a direct threat to the health or safety of others. The term "direct threat" means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures or by the provision of auxiliary aids or services. 42 U.S.C. § 12182(b)(3).

The specific issue, therefore, was "whether an individual, such as Anderson, poses a direct threat to the health or safety of others" under the circumstances of this case. According to the federal district court, federal regulations under the ADA require a "public accommodation" to make an "individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence." In so doing, such public accommodations must ascertain the following:

(1) the nature, duration, and severity of the risk; (2) the probability that the potential injury will actually occur; and (3) whether reasonable modifications of policies, practices, or procedures will mitigate the risk. 28 C.F.R. § 36.208(c).

I'm Looking Through You

Further, the court found that the ADA's regulatory definition of "direct threat" adopted "the standard first articulated by the United States Supreme Court in *School Board of Nassau County, Fla. v. Arline*, 480 U.S. 273, 107 S.Ct. 1123, 94 L.Ed.2d 307 (1987).

The [Supreme] Court held that a person suffering from the contagious disease of tuberculosis can be a handicapped person with the meaning of Section 504 of the Rehabilitation Act of 1973. The Court recognized that there is a need to balance the interests of people with disabilities against legitimate concerns for public safety. The determination that a person poses a direct threat to the health or safety of others may not be based on generalizations or stereotypes about the effects of a particular disability; it must be based on an individual assessment that conforms to the requirements of 28 C.F.R. § 36.208(c). An individualized inquiry is essential if the law is to achieve its goal of protecting disabled individuals from discrimination based on prejudice, stereotypes, or unfounded fear.

Applying these principles to the facts of this particular case, the federal district court found "no indication in the pleadings, affidavits, or oral arguments presented by the parties that Little League, Inc. conducted an individualized assessment and determined that Anderson poses a direct threat to the health and safety of others."

In fact, there is no indication that Little League, Inc. undertook any type of inquiry to ascertain "the nature, duration, and severity of the risk" posed by Anderson; "the probability that the potential injury will actually occur;" or "whether reasonable

modifications of policies, practices, or procedures will mitigate the risk" allegedly posed by Anderson. Little League, Inc.'s policy amounts to a absolute ban on coaches in wheelchairs in the coaches box, regardless of the coach's disability or the field or game conditions involved.

Accordingly, the court concluded that "[r]egrettably, such a policy--implemented without public discourse--falls markedly short of the requirements enunciated in the Americans with Disabilities Act and its implementing regulations." In reaching this conclusion the court gave "great weight to the fact that Anderson has served as a Little League coach at either first base or third base for three years without incident." Further, the court acknowledged "Anderson's significant contributions of time, energy, enthusiasm, and personal example benefit the numerous children who participate in Little League activities as well as the community at large."

Anderson's work with young people teaches them the importance of focusing on the strengths of others and helping them rise to overcome their personal challenges. The Court has no doubt that both Anderson and the children with whom he works will suffer irreparable harm if Little League, Inc. are permitted to arguably discriminate against Anderson based upon his disability. Such discrimination is clearly contrary to public policy and the interests of society as a whole. In particular, such discrimination is contrary to the interests of Anderson and everyone who is interested or participates in Little League activities, including the Little League, Inc. organization and its officers. The Court anticipates that the parties will respect these interests and cooperate so that the tournament will begin on schedule and the games will be played as they were during the regular season.

As a result, the federal district court granted Anderson's request for a order restraining Little League, Inc. from preventing, or attempting to prevent, Anderson's participation in coaching on the field.

Defendants are enjoined from preventing or attempting to prevent Anderson from participating fully, coaching on the field, or otherwise being involved to the full extent of his responsibilities as coach, under the auspices of Little League Baseball, Inc. Furthermore, Little League, Inc.s are enjoined from intimidating or threatening players, parents of players, coaches, officials, umpires, or other persons involved in Little League Baseball and from attempting to induce them to boycott games because of Anderson's participation.