

THE GAME OF PLEASANT DIVERSION: CAN WE LEVEL THE PLAYING FIELD FOR THE DISABLED ATHLETE AND MAINTAIN THE NATIONAL PASTIME, IN THE AFTERMATH OF *PGA TOUR, INC. V. MARTIN*: AN EMPIRICAL STUDY OF THE DISABLED ATHLETE

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*Sports is defined as “something that is a source of pleasant diversion: a pleasing or amusing pastime or activity . . . something light, playful, or frivolous and lacking in serious intent or spirit.”*¹

INTRODUCTION

Kenny Walker, a deaf football player; Jim Abbott, a one-handed professional baseball player; Tom Dempsey, a physically disabled professional football kicker; Brad Doty, a paralyzed auto racer; and Nick Ackerman, a wrestler with amputated legs, have all competed at the highest level of sports.² Persons with mental illness, individuals who are blind, and students with hearing

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¹ WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 2206 (3d ed. 1993).

² See Eldon L. Ham, *Disabled Athletes: A Last Vestige of Court Tolerated Discrimination?*, 8 SETON HALL J. SPORT L. 741, 749 (1998) (noting that disabled athletes Kenny Walker and Jim Abbott compete in college football and major league baseball, respectively); Michael Hirsley & Steve Rosenbloom, *Other Sports Don't See Ruling as a Threat*, CHI. TRIB., May 30, 2001, at 8 (stating that Brad Doty, paralyzed from the waist down, competes in the Indy Racing League by using hand controls); William Kalec, *Kick of a Lifetime*, TIMES-PICAYUNE (New Orleans), Jan. 11, 2005, at 1 (discussing Tom Dempsey's achievements as a kicker in the National Football League); Gary Mihoces, *Amputations Don't Pin Down Wrestler*, USA TODAY, Mar. 29, 2001, at 4C (profiling Nick Ackerman, a wrestler with amputated legs).

impairments are seeking an opportunity to compete in fair competition³ with their non-disabled competitors.⁴ Can this occur in a fair, open, and just manner between competing athletes?

Does the Americans with Disabilities Act of 1990 ("ADA"),⁵ the landmark civil rights act protecting an individual with a physical or mental impairment,⁶ require leveling the playing field in order for the disabled athlete to compete fairly? Will we see two bounces in tennis at Wimbledon, four strikes at Yankee Stadium, enlarging the basketball rim during March Madness, or a head start for track and field athletes during the Olympics?

Did Casey Martin, a professional golfer with Klippel-Trenaunay-Weber Syndrome, a degenerative circulatory condition affecting blood flow, who was permitted by the United States Supreme Court to use a golf cart while his competition was required to walk during the PGA Tour,⁷ forever change the rules of the game? Will the ADA's reasonable accommodation provisions⁸ fundamentally alter the game? Can one level the playing field in sports without undermining the essence of athletic competition?

In comparing and contrasting the level of competition ranging from little league baseball and neighborhood soccer leagues for children, to high school athletics, National Collegiate Athletic Association ("NCAA") college programs, and ultimately to professional and Olympic sports, is there room for the disabled athlete to compete fairly, openly, and equitably without disturbing the precious goal of fair competition? How does the ADA impact various levels of competition as the game evolves from a pleasing or amusing pastime for the young athlete to

³ Fair competition is defined as "[o]pen, equitable, and just competition between business competitors." BLACK'S LAW DICTIONARY 302 (8th ed. 2004).

⁴ See Jason L. Thomas, Note, *Through the ADA and the Rehabilitation Act, High School Athletes are Saying "Put Me In Coach"*: Sandison v. Michigan High School Athletic Ass'n, 65 U. CIN. L. REV. 727, 741-42 (1997) ("The typical student-athlete case . . . involves a disabled student who files suit requesting an injunctive remedy to secure her participation in an interscholastic sports program.").

⁵ Pub. L. No. 101-336, 104 Stat. 327 (codified as amended at 42 U.S.C. §§ 12101-12113 (2000)).

⁶ See 42 U.S.C. § 12101(b)(1) (stating that the purpose of the Act is "the elimination of discrimination against individuals with disabilities").

⁷ See PGA Tour, Inc. v. Martin, 532 U.S. 661, 668, 690 (2001). See generally David Bennet Ross & Tracy C. Missett, *Reviewing Casey Martin's Supreme Court Win*, N.Y. L.J., Aug. 3, 2001, at 1 (analyzing the outcome of the case).

⁸ 42 U.S.C. § 12111(9) (outlining what "reasonable accommodation" includes).

fierce competition by the elite athlete, particularly when it involves our national pastime?

Empirical data provided in this Article is submitted to serve as a backdrop for purposes of elaboration and comparison. One hundred fifteen high school athletic directors in Virginia, Pennsylvania, and Maryland, and twenty-three college athletic programs were surveyed to elicit their opinions on the provision of accommodations to the disabled high school and college athlete in a variety of sports.⁹ Data was collected on the type of disability, the particular sport, and the nature of the accommodation permitted, as well as data on the denial of the accommodation, with explanations provided.

A variety of the rules of the governing bodies that oversee and administer various sports, ranging from the NCAA,¹⁰ professional organizations,¹¹ and the National Federation of State High School Associations,¹² will be analyzed. Certain sports and some specific disabled athletes will be highlighted.

This Article will discuss and analyze court decisions in the area of reasonable accommodations for the disabled athlete in order to understand the impact of the ADA and the direction courts are heading as they tackle this challenging and significant area of law. Finally, this Article offers recommendations regarding fair competition in an open and equitable manner for the disabled athlete in the aftermath of *Martin*.

The arrival of the twenty-first century marked the beginning of the second decade since the passage of the Americans with Disabilities Act.¹³ It also marked a quarter century since the passage of the Individuals with Disabilities Education Act

⁹ Donald H. Stone, Results of Institution Survey for Treatment of Athletes with Disabilities (2003) (on file with author). The empirical study included a three-page questionnaire sent to the high school and college athletic directors in the states of Maryland, Pennsylvania, and Virginia. A portion of the study's results are reproduced in tabular form in Section VI, and a blank survey form is provided at Appendix A, *infra*.

¹⁰ See NAT'L COLLEGIATE ATHLETIC ASS'N, PLAYING RULES (2004), available at http://www2.ncaa.org/legislation_and_governance/rules_and_bylaws/.

¹¹ See, e.g., U. S. GOLF ASS'N, THE RULES OF GOLF (2004), available at http://www.usga.org/playing/rules/rules_of_golf.html.

¹² See NAT'L FED'N OF STATE HIGH SCHOOL ASS'NS, SPORTS AND RULES INFORMATION (2005), available at http://www.nfhs.org/scriptcontent/va_Custom/vimDisplays/contentpagedisplay.cfm?content_id=137.

¹³ Pub. L. No. 101-336, 104 Stat. 327 (1990) (codified as amended at 42 U.S.C. §§ 12101-12113 (2000)).

("IDEA").¹⁴ The IDEA opened the schoolhouse doors for disabled children to receive a free and appropriate education in the least restrictive environment. Individuals with disabilities rely on these statutes to assert their rights to arrive at ball fields, jump into swimming pools, and seek opportunities to compete in all levels of competitive sports.¹⁵

According to 1990 congressional findings, approximately 43,000,000 Americans had at least "one or more physical or mental disabilit[y]."¹⁶ Congress recognized that society has a tendency "to isolate and segregate individuals with disabilities" and that such discrimination "continue[s] to be a serious and pervasive social problem."¹⁷ Discrimination against individuals with disabilities persists in many areas, including recreation.¹⁸ Society's actions have relegated persons with disabilities to "a position of political powerlessness . . . resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society."¹⁹ "[T]he continuing existence of . . . discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis."²⁰

On July 26, 1990, Congress enacted the ADA,²¹ a landmark civil rights bill designed to open all aspects of American life to individuals with disabilities. The stated purpose of the federal law was "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities."²² The stated focus of the ADA was to furnish "clear,

¹⁴ 20 U.S.C. §§ 1400–1487 (1999). Congress enacted this statute, formerly known as the Education of the Handicapped Act, in 1975 to provide special education and related services to disabled children.

¹⁵ See Thomas, *supra* note 4, at 741–42.

¹⁶ 42 U.S.C. § 12101(a)(1). Congress noted this number was increasing as the population grew older. *Id.* Statistics from the Department of Commerce suggest that by 1992 the number of disabled Americans increased to 49,000,000. U.S. DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES 1994, at 137 (114th ed. 1994).

¹⁷ 42 U.S.C. § 12101(a)(2).

¹⁸ *Id.* § 12101(a)(3).

¹⁹ *Id.* § 12101(a)(7).

²⁰ *Id.* § 12101(a)(9) (concluding that such discrimination "costs the United States billions of dollars in unnecessary expenses resulting from dependency and non-productivity").

²¹ Pub. L. No. 101-336, 104 Stat. 327 (1990) (codified as amended at 42 U.S.C. §§ 12101–12213 (2000)).

²² 42 U.S.C. § 12101(b)(1).

strong, consistent, enforceable standards addressing discrimination against individuals with disabilities.”²³ Furthermore, Congress bestowed on the federal government the primary responsibility for enforcing the standards established by the ADA.²⁴

According to 1991–1992 data published by the Department of Commerce, of the almost 49,000,000 disabled Americans, 17,300,000 had trouble walking, 9,700,000 had visual impairments, 10,900,000 had hearing impairments, and 2,300,000 had trouble speaking.²⁵ Almost one half of the total disabled population—24,100,000 Americans—was classified as having severe disabilities.²⁶

It appears that Congress intended to protect athletes with disabilities from discrimination in various areas of sports. Title I of the ADA covers employers with fifteen or more employees.²⁷ Examples may include professional associations such as the National Basketball Association, the National Football League, and Major League Baseball. Title II of the ADA encompasses state and local government.²⁸ State-run colleges and universities as well as elementary and secondary schools are covered.²⁹ The NCAA establish the eligibility rules and procedures for participation in college athletic programs. The high school athletic programs are handled by the National Federation of State High School Associations and by individual state high school activities associations.³⁰

Title III of the ADA prohibits discrimination by places of public accommodation, defined to include facilities operated by private entities whose operations affect commerce and fall within one of the twelve categories—including a variety of accommodations that impact on sports activities.³¹ Meeting the

²³ *Id.* § 12101(b)(2).

²⁴ *Id.* § 12101(b)(3).

²⁵ U.S. DEP’T OF COMMERCE, *supra* note 16, at 137 (114th ed. 1994).

²⁶ *Id.*

²⁷ 29 C.F.R. § 1630.2(e)(1) (2004).

²⁸ 28 C.F.R. § 35.104 (2004) (“Public entity means [a]ny State or local government.”).

²⁹ *See, e.g.*, *Coleman v. Zatechka*, 824 F. Supp. 1360, 1367–68 (D. Neb. 1993) (finding that the University of Nebraska was a “public entity” within the meaning of the ADA”).

³⁰ The examples of such state level entities are Colorado High School Activities Association and Florida High School Activities Association.

³¹ 28 C.F.R. § 36.104 (2004).

definition are the following: stadiums, parks, places of recreation, places of education, gymnasiums, health spas, bowling alleys, golf courses, and other places of exercise or recreation.³²

The scope and breadth of the ADA brings disabled athletes—from neighborhood recreation programs, to high schools and colleges, and up to the professional level—within the watchful eye of the ADA. In order for disabled athletes to compete on a level playing field with non-disabled athletes, it may be necessary to provide reasonable accommodations that will make facilities and eligibility criteria usable by individuals with disabilities.³³

I. THE BENCHMARK: *PGA TOUR, INC. V. MARTIN*³⁴

Casey Martin, a professional golfer, suffers from Klippel-Trenaunay-Weber Syndrome, a degenerative and progressive “circulatory disorder that obstructs the flow of blood from his right leg back to his heart,” causing severe pain and fatigue.³⁵ Mr. Martin has been described as a “talented golfer,”³⁶ who in his early years of competition won state junior-golf events, and as a high school senior the Oregon State championship.³⁷ He and teammate Tiger Woods were members of the Stanford University golf team that won the 1994 NCAA Championship.³⁸ As a professional, he qualified for both the Nike and PGA Tours.³⁹ As a collegiate athlete, Mr. Martin received, by virtue of his disability, an accommodation to the requirement that players walk and carry their own clubs,⁴⁰ a modification to the NCAA golf rules. This accommodation entitled him to use a golf cart.⁴¹

According to the ADA, the term “disability”⁴² with respect to an individual means: “(A) a physical or mental impairment that

³² *Id.*

³³ *See id.* § 12111(9)(A)–(B).

³⁴ 532 U.S. 661 (2001).

³⁵ *Id.* at 668.

³⁶ *Id.* at 667.

³⁷ *Id.* at 667–68.

³⁸ *Id.* at 668; *see* GolfWeb, *Casey Martin—Biographical Information*, at <http://www.golfweb.com/players/bio/149595> (last visited Mar. 22, 2005).

³⁹ *Martin*, 532 U.S. at 668.

⁴⁰ *Id.*

⁴¹ *See id.*

⁴² 42 U.S.C. § 12102(2) (2000).

substantially limits one or more of the major life activities of such individual;⁴³ “(B) a record of such an impairment;”⁴⁴ or “(C) being regarded as having such an impairment.”⁴⁵ Individuals with impairments must be substantially limited in one or more major life activities, such as “caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.”⁴⁶

Regardless of reasonable accommodations, the ADA requires that a disabled athlete “meets the essential eligibility requirements for . . . the participation in programs or activities provided by a public entity.”⁴⁷ Athletic programs must make reasonable modifications in policies, practices, or procedures, unless doing so would pose an undue burden or hardship⁴⁸ or require athletic programs to fundamentally alter the athletic activity.

Casey Martin is an individual with a disability as defined by the ADA⁴⁹ because he has “a physical or mental impairment that substantially limits one or more of [his] major life activities.”⁵⁰ Mr. Martin’s major life activity that is substantially limited is his ability to walk.⁵¹ As a result of his disability, he could no longer walk an eighteen-hole golf course, as “[w]alking not only caused him pain, fatigue, and anxiety, but also created a significant risk of hemorrhaging, developing blood clots,” and created a serious risk of “fracturing his tibia so badly that an amputation might be

⁴³ *Id.* § 12102(2)(A). Congress intended to protect individuals with substantial impairments, such as athletes with learning disabilities, mental illnesses, hearing and sight impairments, drug and alcohol addiction, as well as individuals who are wheelchair users.

⁴⁴ *Id.* § 12102(2)(B). A cancer patient who has been treated, recovered, and is no longer considered to have cancer would be an instance where a record would be sought.

⁴⁵ *Id.* § 12102(2)(C). This would include, for example, a person who society considers mentally retarded, but who is in fact not so.

⁴⁶ *See* 29 C.F.R. § 1630.2 (2004).

⁴⁷ *See* 28 C.F.R. § 35.104 (2004).

⁴⁸ *See* 42 U.S.C. § 12111(9)–(10). Factors to consider with respect to undue hardship include “nature and cost of the accommodation, . . . overall financial resources of the facility . . . and type of operation . . . of the covered entity.” *Id.* § 12111(10)(B).

⁴⁹ *See id.* § 12102(2)(A) (2000).

⁵⁰ *Id.*

⁵¹ *See* PGA Tour, Inc. v. Martin, 532 U.S. 661, 668 (2001); *see also* 28 C.F.R. § 36.104 (2004).

required.”⁵²

Mr. Martin requested the use of a golf cart while competing in the PGA tour, the professional golf tournament. The United States Supreme Court was asked to decide “whether a disabled contestant may be denied the use of a golf cart because it would ‘fundamentally alter the nature’ of the tournament to allow him to ride when all other contestants must walk.”⁵³ The issue confronting the Court was whether the modification in its policies, practices, or procedures was a fundamental alteration in the nature of the game of golf. It answered with a resounding no—a waiver of the walking rule for Martin would not create a fundamental alteration, and therefore, Martin should be permitted to use a golf cart.⁵⁴

The rules governing the competition in PGA tour events are set forth in three documents. First, there are “The Rules of Golf,”⁵⁵ which are jointly written by the United States Golf Association (“USGA”) and the Royal and Ancient Golf Club of Scotland. These rules “do not prohibit the use of golf carts at any time.”⁵⁶ Second, there are the “Conditions of Competition and Local Rules,” which apply to PGA professional tours.⁵⁷ These rules require PGA tour players “to walk the golf course during tournaments, but not during open qualifying rounds.”⁵⁸ “Third, ‘Notices to Competitors’ are issued for particular tournaments and cover conditions for that specific event.”⁵⁹

In evaluating whether the use of a golf cart would “fundamentally alter the nature” of the PGA tour, the Court made an individual inquiry based on Casey Martin’s disability and concluded that the use of a golf cart was a reasonable modification.⁶⁰ The Court reasoned that the requested modification of the no-cart rule was reasonable and necessary for disabled athlete Casey Martin and would not “fundamentally alter” the competition.⁶¹ The Court recognized that walking the

⁵² *Martin*, 532 U.S. at 668.

⁵³ *Id.* at 664–65 (citation omitted).

⁵⁴ *See id.* at 689–90.

⁵⁵ U. S. GOLF ASS’N, *supra* note 11.

⁵⁶ 532 U.S. at 666.

⁵⁷ *Id.*

⁵⁸ *Id.* at 666–67.

⁵⁹ *Id.* at 667.

⁶⁰ *See id.* at 690.

⁶¹ *See id.*

golf course was “not an essential attribute of the game itself,”⁶² nor “an indispensable feature” of the golf tournament.⁶³

The Court rejected PGA Tour’s argument that the purpose of the walking rule is “to inject the element of fatigue into the skill of shot-making,”⁶⁴ and that allowing Casey Martin to use a golf cart would fundamentally alter the nature of the PGA’s highest-level tournament.⁶⁵ The Court recognized that the game of golf cannot “guarantee that all competitors will play under exactly the same conditions or that an individual’s ability will be the sole determinant of the outcome”⁶⁶ and that “pure chance” such as “changes in the weather” or a “lucky bounce . . . may have a greater impact on the outcome of elite golf tournaments than the fatigue resulting from the enforcement of the walking rule.”⁶⁷ The Court noted that the fatigue from walking five miles during one day of the tournament is equivalent to burning five hundred calories, “nutritionally . . . less than a Big Mac.”⁶⁸

II. THE IMPLICATIONS OF THE *MARTIN* DECISION

Will the *Casey Martin* decision forever change the game of golf, or will it simply open the game’s doors to disabled athletes who, if talented enough, can shoot a low enough score to make the cut? Will our national pastime, baseball, be modified to allow four strikes instead of the traditional three, as Justice Scalia feared in his dissent in *Martin*?⁶⁹

In *Olinger v. United States Golf Ass’n*⁷⁰ the Seventh Circuit determined that the use of a golf cart for Ford Olinger, a professional golfer with a physical disability that significantly impairs his ability to walk, would fundamentally alter the nature of competition.⁷¹ The district court in *Olinger* focused on the

⁶² *Id.* at 685.

⁶³ *Id.*

⁶⁴ *Id.* at 686 (quoting *Martin v. PGA Tour, Inc.*, 994 F. Supp. 1242, 1250 (D. Or. 1998)).

⁶⁵ *Id.* at 690.

⁶⁶ *Id.* at 686–87.

⁶⁷ *Id.* at 687.

⁶⁸ *Id.* (quoting *Martin*, 994 F. Supp. at 1250). The Court also noted that walking relieves stress and offers some strategic advantages. *Id.* at 687–88.

⁶⁹ *See id.* at 702–03 (Scalia, J., dissenting).

⁷⁰ 205 F.3d 1001 (7th Cir. 2000), *vacated by* 532 U.S. 1064 (2001), *overruled in part by* *PGA Tour, Inc. v. Martin*, 532 U.S. 661 (2001).

⁷¹ *Id.* at 1001, 1005. Ford Olinger suffers from bilateral avascular necrosis, a condition that impairs the ability to walk. *Id.* at 1001.

uniqueness of athletic competition and its different concerns “from those presented by the workplace.”⁷² The court distinguished athletic competition as deciding “who, under conditions that are about the same for everyone, can perform an assigned set of tasks better than . . . any other competitor.”⁷³ This view runs contrary to the essence of the ADA, which speaks to providing “reasonable accommodations” in order for a person with a disability to compete fairly.⁷⁴

Will the floodgates be opened by disabled athletes' requests to modify the rules of the game to allow them to compete on level playing fields with non-disabled athletes? Will certain athletes be given a head start in a race? Will other disabled athletes be given two bounces instead of one in tennis? Will the baseball player with a disability be given four strikes instead of three? Will the deaf football player be given additional time to block after the whistle has been blown to stop play? Can the disabled athlete receive reasonable accommodations that do not fundamentally alter the nature of the game? Is there a middle ground that will allow reasonable modifications to athletic competitions that permit disabled athletes to compete fairly without providing them with an unfair advantage?

Factors in addressing these questions include the level of competition: elementary school age children competing in recreation leagues, high school and college competitive athletes, and professional and Olympic athletes. Additionally, the particular sport involved may dictate the availability of a reasonable accommodation. Speed events, such as track and swimming, may present certain challenges for finding reasonable accommodations that skill sports, such as golf, baseball, and football, may not.

A solution to this thorny question may be for athletic programs and events to be more lenient on rules of compliance for recreation and leisure activities. As athletes progress from high school sporting events to the college level, moderate rules of compliance should be the norm. And, finally, strict rules of compliance should be required only for professional athletes engaging in competitive sports.

⁷² 55 F. Supp. 2d 926, 937 (N.D. Ind. 1999).

⁷³ *Id.*

⁷⁴ See 29 U.S.C. § 701(a) (2000) (explaining that reasonable accommodations should be made for those with disabilities).

Society should look closely at the purpose of sports. Is it leisure activity or fierce competition? Is it personal participation for the sheer pleasure of the activity? Or, as often seen in the professional sports, is it fame, winning, and the monetary aspect that drives the athlete? The community expectations of the particular sporting event should be a significant factor in the determination of whether an accommodation to the disabled athlete would fundamentally alter the game.

The tension between opening the door to the disabled athlete and providing such athlete with an unfair advantage will be reduced as we look closely at the level of competition and its purpose within society. In an effort to learn where we go after *Martin*, a look at disabled athletes who have competed in the past, often without the protection of the ADA, is worth a glance.

III. DISABLED ATHLETES WHO OVERCAME BARRIERS

Baseball, our national pastime, with its fans that worship its rules and statistics and cherish the purity and innocence of the game, has seen disabled athletes compete. Pete Gray, a Major League Baseball player, played seventy-seven games with the St. Louis Browns in 1945, and batted .218 “despite losing his right arm in a childhood . . . accident.”⁷⁵ Gray, a right-handed player as an adolescent, learned to use his left hand in the major leagues. His glove was modified by removing the padding so that he could hold it loosely on his fingertips, thereby allowing him to discard the glove more quickly to field a softly hit ball.⁷⁶ Such flexibility gave Gray the option of fielding barehanded or using his glove to catch a line drive. No apparent modifications were provided to Gray and he was successful enough to rise to the big leagues without accommodations to the game.

Jackie Jensen, a star outfielder for the Boston Red Sox, and the 1958 American League Most Valuable Player, suffered from anxiety resulting from a fear of flying. Because of his phobia, he was forced to retire from baseball at the height of his eleven-season major league career.⁷⁷ Jensen played with the New York

⁷⁵ See THE BALLPLAYERS: BASEBALL'S ULTIMATE BIOGRAPHICAL REFERENCE 408 (Mike Shatzkin ed., 1990); Richard Goldstein, *Pete Gray, Major Leaguer with One Arm*, *Dies at 87*, N.Y. TIMES, July 2, 2002, at A19.

⁷⁶ See THE BALLPLAYERS: BASEBALL'S ULTIMATE BIOGRAPHICAL REFERENCE, *supra* note 75, at 408; Goldstein, *supra* note 75.

⁷⁷ See THE BALLPLAYERS: BASEBALL'S ULTIMATE BIOGRAPHICAL REFERENCE,

Yankees, the Washington Senators, and the Boston Red Sox⁷⁸ before retiring at age thirty-four.

There have been disabled athletes who have received accommodations to the rules of the game in professional baseball. One example is Jim Abbott, a pitcher with the California Angels who was born without his right hand.⁷⁹ He was permitted to spin the baseball in his left hand, a conflict with the "motionless rule," which requires the pitcher to be motionless prior to delivering the pitch to the batter. Abbott was permitted "to spin the ball even though the strictest interpretation of the rules state that a pitcher must remain completely still before his delivery."⁸⁰ Generally, pitchers will keep the ball in their gloves until the last moment before throwing it to the plate in order to hide the ball from the batter and make it hard for the batter to see the grip and recognize the pitch being thrown (curveball, fastball, knuckleball, change-up, slider). Abbott was permitted to spin the ball in his hand to avoid the batter identifying the pitch. According to Abbott, this was not an advantage because it merely allowed him "to do something that everyone else was able to do naturally."⁸¹

There also have been disabled athletes who have received special accommodations in professional football. One example is Tom Dempsey, a professional football player who, because he was born with a partially formed right foot, wore a special kicking shoe approved by the National Football League.⁸²

IV. THE RULES OF THE GAME: CAN THEY BE REASONABLY MODIFIED?

The athlete who is deaf poses challenges in sports where the whistle is used to start and end play. In football, the referee will blow a whistle to end a play, and all blocking and tackling must

supra note 75, at 525; Hickok Sports, Sports Biographies, at <http://www.hickoksports.com/biograph/jensenjackie.shtml> (last modified Sept. 6, 2004).

⁷⁸ See Hickok Sports, *Sports Biographies: Jack E. "Jackie" Jensen*, at <http://www.hickoksports.com/biograph/jensenjackie.shtml> (last modified Sept. 6, 2004).

⁷⁹ See Ira Berkow, *Abbott's Inspirational Return*, N.Y. TIMES, May 21, 1999, at D4.

⁸⁰ Brief for Respondent at 49, *PGA Tour, Inc v. Martin*, 532 U.S. 661 (2001) (No. 00-24).

⁸¹ *Id.*

⁸² *Id.*

thereafter cease, or else the offending team is penalized. For the deaf player, this presents a significant hurdle, and a reasonable modification may be necessary. An interpreter could be positioned on the field for the deaf player to observe when the play has ended. Also, at the start of a play, on the offensive side of the ball, the quarterback usually shouts out signals, indicating when the play is to begin. In both situations, the start and end of a play could be signaled to the deaf player if an interpreter were permitted to stand on the field in view of the player. The NCAA football rules prohibit any attendants on the playing field or outside the twenty-five yard line without the referee's permission.⁸³ A reasonable accommodation that would not fundamentally alter the game of football would be to permit the interpreter on the field to signal the start and end of the play, contingent on the interpreter not interfering with the play of the game.

In swimming, the start of the race is indicated orally. First, a long whistle from the referee signals the swimmers to step onto the starting platform. Second, the starter's verbal command "take your marks" instructs the swimmers "to take up a starting position with at least one foot at the front of the starting platforms." Third, "when all swimmers are stationary, the starter shall give the starting signal" by multiple loudspeakers mounted one at each starting platform.⁸⁴ The challenge is for the deaf swimmer to receive the instructions in this three-step process in a fair and equitable manner, thus allowing him to start the race at the same exact time as his non-disabled competitors. One option would be a sign-language interpreter, who takes the cue from the starter's verbal instruction and whistle. Because a split second may make the difference between the first place and the last place finish in a speed race such as swimming, a better alternative to the interpreter should be provided. A voice-activated visual signal controlled by the starter's voice could be used to indicate the three-step process to commence swimming, without the deaf swimmer losing precious split seconds at the start of the race. This reasonable

⁸³ NAT'L COLLEGIATE ATHLETIC ASS'N, 2004 NCAA FOOTBALL RULES AND INTERPRETATIONS, at FR-114 Rule 9-2 (May 2004), *available at* http://www.ncaa.org/library/rules/2004/2004_football_rules.pdf.

⁸⁴ FEDERATION INTERNATIONALE DE NATATION, FINA SWIMMING RULES, at SW 4.1 (2002-2005), *available at* http://www.fina.org/swimrules_4.html.

accommodation would allow deaf swimmers to participate in all swimming competitions where oral cues are utilized. Such a modification also could be utilized in track meets, where a starter's pistol commences the start of a race. The sound-activated verbal cues, located in visual sight of the deaf athlete, would constitute a reasonable accommodation.

V. REVIEW OF COURT DECISIONS

The United States Supreme Court handed down the sweeping decision in *PGA Tour, Inc. v. Martin*,⁸⁵ declaring that Casey Martin's use of a golf cart, despite the PGA's walking requirement, is not a modification that would "fundamentally alter" the nature of the game of golf.⁸⁶

In *Olinger v. United States Golf Ass'n*,⁸⁷ a case similar to *Martin*, the Seventh Circuit reached an opposite result. Ford Olinger, a skilled and talented golfer, suffered from bilateral avascular necrosis, "a degenerative condition that significantly impair[ed] his ability to walk."⁸⁸ Olinger sought permission to ride in a golf cart in order to compete in the PGA's United States Open, a modification to the "walk only" requirement.⁸⁹ The court supported the USGA's position that Olinger's "use of a [golf] cart during the tournament would fundamentally alter the nature of the competition."⁹⁰

The *Olinger* court relied on the Supreme Court's first impression of the "fundamentally alter" concept under the Rehabilitation Act⁹¹ in *Southeastern Community College v. Davis*,⁹² where the Court explained that a disabled person's requested accommodation was unreasonable if there were substantial modifications and the person could not meet all of the program's essential requirements.⁹³ The court pointed to other cases that reached similar results, such as *Sandison v. Michigan*

⁸⁵ 532 U.S. 661 (2001).

⁸⁶ *See id.* at 690.

⁸⁷ 205 F.3d 1001 (7th Cir. 2000), *vacated by* 532 U.S. 1064 (2001), *overruled in part by* *PGA Tour, Inc. v. Martin*, 532 U.S. 661 (2001).

⁸⁸ *See id.* at 1001.

⁸⁹ *See id.*

⁹⁰ *Id.* at 1005.

⁹¹ *See* 29 U.S.C. § 701 (2000); *see also Olinger*, 205 F.3d at 1005 (indicating that the "fundamentally alter" concept originated under § 701).

⁹² 442 U.S. 397 (1979).

⁹³ *See id.* at 410.

High School Athletic Ass'n,⁹⁴ which rejected disabled students' challenges to an athletic age requirement.⁹⁵ Also, in *Pottgen v. Missouri State High School Activities Ass'n*,⁹⁶ the court found that waiving an essential eligibility standard would fundamentally alter the nature of a youth baseball program.⁹⁷ The *Olinger* court accepted the lower court's finding that "the nature of the [golf] competition would be fundamentally altered' if the walking rule were eliminated because it would 'remove stamina . . . from the set of qualities designed to be tested in this competition."⁹⁸

In *Kuketz v. MDC Fitness Corp.*,⁹⁹ a paraplegic individual who used a wheelchair sought an accommodation for playing racquetball. Mr. Kuketz, who wanted to compete with the Club's finest footed racquetball players in the Club's Men's "A" Level Tournament League, "insisted that he be permitted two bounces to hit the ball, rather than the one bounce given to all footed players."¹⁰⁰ The court was asked to determine whether the modification of the one-bounce rule for this disabled athlete was reasonable or "whether it would 'fundamentally alter the nature of the competition."¹⁰¹ The court rebuked Kuketz's request to modify the one-bounce rule to a two-bounce rule to hit the ball.¹⁰² The court, in rejecting the requested modification, noted that the imposition of the two-bounce rule would "give a disabled player 'an advantage over others."¹⁰³ The court seemed to say that the requested accommodation would not place the disabled athlete on a level playing field with his non-disabled competitors, but instead would provide him with an unfair benefit, thus undermining the nature of competitive sports.

A disabled cyclist who was prevented from participating in a

⁹⁴ 64 F.3d 1026 (6th Cir. 1995).

⁹⁵ *See id.* at 1028.

⁹⁶ 40 F.3d 926 (8th Cir. 1994).

⁹⁷ *See id.* at 930.

⁹⁸ *See Olinger v. United States Golf Ass'n*, 205 F.3d 1001, 1006 (7th Cir. 2000).

⁹⁹ No. CA 9-0114-A, 2001 Mass. Super. LEXIS 347, at *1 (Super. Ct. Mass. Aug. 17, 2001), *aff'd*, 821 N.E.2d 473 (Mass. 2005).

¹⁰⁰ *See id.*

¹⁰¹ *Id.* at *3-4 (quoting *PGA Tour, Inc. v. Martin*, 532 U.S. 661, 683 n.38 (2001)). *See generally* U. S. RACQUETBALL ASS'N, OFFICIAL RULES OF RACQUETBALL, at Rule 3.13 Rallies (effective Sept. 1, 2004) (explaining that a rally is over when a player is unable to hit the ball before it touches the floor more than once), *available at* <http://www.usra.org/Default.aspx?PageContentID=177&tabid=839>.

¹⁰² *See Kuketz*, 2001 Mass. Super. LEXIS 347 at *10-11.

¹⁰³ *Id.* at *9 (citing *Martin*, 532 U.S. at 683).

cross-country bicycle tour because of his refusal to wear a bicycle helmet challenged the denial under the ADA in *Brown v. 1995 Tenet ParaAmerica Bicycle Challenge*.¹⁰⁴ The court granted the tour company's motion to dismiss the disabled cyclist's claim, finding that the tour company was not a "facility" and could not be considered a public accommodation under Title III of the ADA.¹⁰⁵ The court further determined that the tour company did not meet one of the twelve categories of public accommodations listed in the ADA.¹⁰⁶ The *Martin* Court concluded otherwise on a similar question, determining the PGA Tour and its qualifying rounds were within the coverage of Title III of the ADA as "a gymnasium, health spa, bowling alley, *golf course*, or other place of exercise or recreation,"¹⁰⁷ and thus fell within the statute as "a type of place specifically identified by the Act as a public accommodation."¹⁰⁸

In *Anderson v. Little League Baseball, Inc.*,¹⁰⁹ a popular Little League coach who used a wheelchair successfully won the battle to remain on the field despite claims of safety risks.¹¹⁰ The coach was entitled to an equal opportunity and full participation as discussed in the findings of the ADA.¹¹¹

The idea of individual inquiry to determine whether an accommodation or modification is reasonable was addressed in *Cruz v. Pennsylvania Interscholastic Athletic Ass'n*.¹¹² Luis Cruz, a nineteen year-old learning-disabled special education student, sought a waiver of the high school athletic association maximum age rule for participation in interscholastic sports in order to wrestle and play football for two additional semesters.¹¹³

In support of granting the individual waiver of the rule, the

¹⁰⁴ 959 F. Supp. 496 (N.D. Ill. 1997).

¹⁰⁵ *See id.* at 498.

¹⁰⁶ *Id.* at 499; *see also* *Stoutenborough v. Nat'l Football League, Inc.*, 59 F.3d 580, 583 (6th Cir. 1995) (finding that the televised broadcast of football games was not a public accommodation); *Elitt v. U.S.A. Hockey*, 922 F. Supp. 217, 223 (E.D. Mo. 1996) (concluding that a youth hockey league was not a place of public accommodation).

¹⁰⁷ 42 U.S.C. § 12181(7)(L) (2000) (emphasis added).

¹⁰⁸ *Martin*, 532 U.S. at 677.

¹⁰⁹ 794 F. Supp. 342 (D. Ariz. 1992).

¹¹⁰ *Id.* at 343, 346.

¹¹¹ *See* 42 U.S.C. § 12101(a)(8).

¹¹² 157 F. Supp. 2d 485, 499 (E.D. Pa. 2001).

¹¹³ *See id.* at 488–89 (noting that the Maximum Age Rule made students ineligible for athletic competition upon attaining age nineteen).

court heard persuasive testimony that Luis Cruz did not have a competitive advantage, was not a safety risk, did not take the place of other players, and was a positive influence.¹¹⁴ The court noted that the individual approach in addressing the requested accommodation is consistent with the protections intended by the ADA.¹¹⁵ The court also recognized that the basic requirement of the ADA, as set forth in *Martin*, is the evaluation of a disabled person on an individual basis.¹¹⁶ The cornerstone of the ADA, as articulated in the *Martin* and *Cruz* cases, reflects the notion that a requested modification to the game is reasonable when it is necessary for the disabled athlete to fairly compete and the modification does not fundamentally alter the nature of the competition at hand. The individual, case-by-case determination is the best protection to maintaining fairness in sports and opening the door to disabled athletes.

VI. STATISTICAL REVIEW AND ANALYSIS OF ATHLETES WITH DISABILITIES SURVEY

The empirical data contained in this Article is submitted to serve as a backdrop for purposes of elaboration and comparison. One hundred fifteen high schools from Maryland, Pennsylvania, and Virginia were surveyed to obtain data and elicit opinions on issues related to accommodations to disabled athletes in school-sanctioned sports competition.¹¹⁷ The significant number of athletes seeking accommodations in various sports warrants such inquiry. High school athletic programs continue to grapple with disabled athletes' claims for fair and equitable treatment as well as the desire to avoid providing an unfair advantage to the disabled athletes in competition with and against non-disabled athletes.

The empirical data provided in this Article is submitted to demonstrate the extent and variety of reasonable accommodations provided and denied to disabled athletes. One hundred fifteen high schools,¹¹⁸ representing a total student body

¹¹⁴ *Id.* at 491–92.

¹¹⁵ *See id.* at 498–99.

¹¹⁶ *See id.*

¹¹⁷ *See* Stone, *supra* note 9.

¹¹⁸ *Id.* The survey encompassed 115 high schools of which thirty-four were from Maryland, twenty-seven were from Pennsylvania, and fifty-four were from Virginia.

of 129,178, responded to the survey.¹¹⁹ Between January 1, 1998 and June 30, 2002, these high schools provided accommodations for eleven disabled athletes.¹²⁰ Only two high schools have official written policies regarding athletes with disabilities.¹²¹ It would be advisable that several academic officials, including special education teachers, athletic directors and disabled athletes, meet to develop a written policy on rules and procedures for seeking reasonable accommodation in athletic competition.

Between January 1, 1998 and June 30, 2002, 53 out of 107 high schools reported that disabled students participated in sports within their institution.¹²² The types of disabled athletes included students with learning disabilities competing in track and field, a football player with HIV, a baseball player with a mental disorder, a wrestler with cerebral palsy, and a blind gymnast.¹²³ The low number may reflect hidden disabilities not known to the athletic program administrators, or may reflect how difficult and unwelcoming high school sports competition is to students with disabilities.

The number of requests for accommodations by disabled athletes between January 1, 1998 and June 30, 2002 totaled eight,¹²⁴ of which all but one were provided.¹²⁵ One Virginia high school provided an athlete who used a wheelchair an accommodation in a track and field event.¹²⁶ Another Virginia high school permitted a student who had spina bifida to use a wheelchair to compete as a cheerleader.¹²⁷ A disabled wrestler with an artificial limb competed in a competition.¹²⁸ A disabled

¹¹⁹ *Id.* The student population at all responding schools totaled 129,178 students, which included 42,705 students from Maryland, 28,488 from Pennsylvania, and 57,985 from Virginia.

¹²⁰ *Id.* In response to Question 12, the subjects indicated whether an accommodation was made for a particular type of disability.

¹²¹ *Id.* In response to Question 10, one rural Virginia high school and one suburban Maryland high school indicated that they had a written policy.

¹²² *Id.* The responses to Question 11 demonstrated that 17 of the 33 high schools in Maryland, 13 of the high schools in Pennsylvania, and 23 of the 51 high schools in Virginia reported disabled athletes. Although 115 high schools responded to the survey, only 107 responded "yes" or "no" to question 11.

¹²³ *Id.* The list is based on responses to Questions 11–13.

¹²⁴ *Id.* Responses to Question 13 indicate that Maryland had four requests for accommodations, and Pennsylvania and Virginia had two each.

¹²⁵ *Id.* Only one Pennsylvania high school denied the requested accommodation.

¹²⁶ *Id.* A public, suburban high school in Virginia.

¹²⁷ *Id.* A public, rural high school in Virginia.

¹²⁸ *Id.* A public, suburban high school in Pennsylvania.

football player with an artificial leg was permitted to compete in a high school athletic conference in Pennsylvania.¹²⁹ Two physically disabled athletes competed in Maryland high school sporting events: a diabetic football player who wore an insulin pump, and a deaf basketball player who was allowed the use of an interpreter during the game.¹³⁰ A Maryland learning-disabled high school athlete was permitted to compete in the school's athletic programs despite failing to meet the minimum grade point average threshold.¹³¹

Hypothetical questions were posed to the survey responders on a variety of scenarios to determine if the high school would permit the particular accommodation.¹³² Examples of hypotheticals included questions of whether athletes with artificial limbs would be allowed to compete, whether blind swimmers would be disqualified for touching lane dividers while swimming, whether deaf basketball players would be allowed to use vibration devices to notify them when the buzzer sounds, and whether learning-disabled students, who have not maintained the minimum grade point average, would be permitted to play sports.¹³³

In Maryland, the question that resulted in the most denials of the requested accommodation involved the hypothetical blind swimmer who inadvertently touches the lane dividers.¹³⁴ Similar high denials were seen in Pennsylvania, comparable to the high denials to requests for modification in the minimum grade point average threshold necessary to compete in high school athletics, especially responses from the rural and suburban Pennsylvania

¹²⁹ *Id.* A public, rural high school in Pennsylvania.

¹³⁰ *Id.* A public, suburban high school in Maryland.

¹³¹ *Id.*; see also *Bowers v. Nat'l Collegiate Athletic Ass'n*, 974 F. Supp. 459, 467 (D.N.J. 1997) (finding that NCAA provided reasonable accommodations for learning-disabled students to qualify for participation in intercollegiate athletic program). In May 1998, the NCAA reached a settlement agreement that changed its eligibility requirements for student athletes with learning disabilities by providing individual case-by-case assessments. See Nat'l Collegiate Athletic Ass'n, *NCAA and Department of Justice Reach Agreement* (May 26, 1998), <http://www.ncaa.org/releases/miscellaneous/1998/1998052601ms.htm>.

¹³² See *infra* app. A, at Question 14.

¹³³ Stone, *supra* note 9 (providing responses to Question 14).

¹³⁴ *Id.* In Maryland only 14 out of 34 responses to Question 14 indicated a willingness to accommodate this situation. At the same time, twenty-six responses indicated that a deaf basketball player would be allowed to use a vibration device.

high schools.¹³⁵ In Virginia, the football player with HIV/AIDS would see the greatest challenge, as only 11 of 31 rural high schools would permit a football player with HIV/AIDS a reasonable accommodation in order to compete.¹³⁶ Similarly, only 23 of 54 Virginia high schools surveyed would permit the football player with HIV/AIDS a reasonable accommodation.¹³⁷

Below is a comparison of rural, suburban, and urban high schools, state by state, to three particular hypotheticals. The first scenario involved the learning-disabled student seeking a waiver of the minimum grade point average to compete in high school sports. The second hypothetical dealt with the football player with HIV/AIDS. The third hypothetical situation involved the baseball player with a serious emotional disturbance or mental illness. In all three scenarios, high school athletic directors from rural, suburban, and urban high schools in Maryland, Pennsylvania, and Virginia were asked whether their institution would permit the accommodation in order for the disabled athlete to compete. Below are the results.

¹³⁵ *Id.* In rural Pennsylvania, 1 of 6 high schools answered yes to a willingness to modify the minimum GPA for a learning disabled athlete.

¹³⁶ *Id.* (providing responses to Question 14).

¹³⁷ *Id.*

The harshest treatment in Maryland and Pennsylvania appears to be afforded to the learning-disabled athlete seeking a waiver of the minimum GPA threshold to compete. In Virginia, the football player with HIV/AIDS appears to face the greatest challenge. The baseball player with a mental illness appeared to receive the least resistance to compete.

A possible explanation for the challenges facing the learning-disabled athlete seeking a waiver of the minimum GPA to

compete would be a belief that such a modification would fundamentally alter the academic and athletic programs. The greater tolerance for the mentally ill baseball player might be the result of somewhat limited interaction between teammates and greater reliance on individual talent and skills in baseball as opposed to other team sports.

The challenge for the athlete with HIV/AIDS probably arises from the lack of information and understanding about persons with HIV and AIDS generally. Our society continues to be uninformed and thereby confused and uncertain about transmission issues for persons with HIV and AIDS. Prejudice, stigma, and discrimination can be overcome by providing information and education to the public at large. The views of athletic directors in regard to individuals with HIV and AIDS most likely indicate a broader and deeper misunderstanding throughout society when it comes to HIV and AIDS.

VII. RECOMMENDATIONS

In *Wynne v. Tufts University School of Medicine*,¹³⁸ a medical student with learning disabilities challenged his dismissal from medical school. The court had to determine whether the medical school acted in a discriminatory fashion by failing to offer alternatives to written multiple choice examination questions.¹³⁹ The court established the standard for determining whether an educational institution must provide a requested accommodation.¹⁴⁰

High school athletic programs should seek guidance from the *Wynne* decision, because it clearly delineated the process academic institutions should undertake as they consider reasonable accommodations for their students. The court recognized that educational institutions have an obligation to demonstrate that their decisions to not provide accommodations were based on reasoned professional academic judgment.¹⁴¹ Remarkably, an official written policy regarding athletes with disabilities existed in only 2 of 115 high schools responding to the

¹³⁸ 932 F.2d 19 (1st Cir. 1991).

¹³⁹ *Id.* at 20–21.

¹⁴⁰ *See id.* at 23–26 (articulating the principles of “reasonable accommodation” inquiry).

¹⁴¹ *See id.* at 26.

survey.¹⁴² Without a written school policy on responding to requests from disabled athletes seeking to compete in athletic programs, both school officials and student athletes are unable to implement fairly and justly the non-discrimination mandate of the ADA.

The court in *Wynne* clearly articulated the process for evaluating requests for accommodations by disabled students.¹⁴³ High school athletic programs should take a page out of the *Wynne* mandate and establish written policies for evaluating requests for accommodations. The approach to determine whether high school athletic programs have appropriately explored the availability of reasonable accommodations is as follows:

If the institution submits undisputed facts demonstrating that the relevant officials within the institution considered alternative means, their feasibility, cost and effect on the academic program, and came to a rationally justifiable conclusion that the available alternatives would result either in lowering academic standards or requiring substantial program alteration, the court could rule as a matter of law that the institution had met its duty of seeking reasonable accommodation.¹⁴⁴

High schools should bring together a cadre of specialists and relevant individuals including teachers, administrators, experts in the field of disabilities, disabled athletes and their parents, and athletic directors to develop and design written policies and procedures for the operation and administration of athletic programs. The development of such written policies would ensure that disabled athletes are guaranteed the protection that the ADA mandates. It would also ensure fair and equitable treatment to all athletes and guarantee that sports are open to all persons, regardless of their disability. Only then will high school athletic programs meet their mission of providing a source of pleasant diversion.

¹⁴² Stone, *supra* note 9 (providing responses to Question 10).

¹⁴³ See *Wynne*, 932 F.2d at 25–26.

¹⁴⁴ *Id.* at 26.

APPENDIX AINSTITUTION SURVEY FOR TREATMENT OF ATHLETES WITH
DISABILITIESCOLLEGE OR UNIVERSITY ATHLETIC PROGRAM
ASSOCIATE DEAN DONALD H. STONE
UNIVERSITY OF BALTIMORE SCHOOL OF LAW
2003

1. What is the position of the person answering this survey? (Ex. Athletic Director, Coach, School Administrator, etc.) _____.
2. Please check the type of institution answering this survey:
 - a. ____ Community College/Junior College
 - b. ____ University or College
3. What is the total student population at your institution _____.
4. In which conference does your team compete? (If more than one, please list all conferences your teams compete in.) _____.
5. How many coaches are presently involved in your athletic program? _____.
6. Is your institution:
 - a. ____ Public
 - b. ____ Private
7. In which state is your institution/team located? _____.
8. How would you characterize the location of your institution? (Check the applicable option.)
 - a. ____ Urban
 - b. ____ Suburban
 - c. ____ Rural
9. Which sports are offered at your institution? (Check all applicable options.)

a. ____ Baseball	i. ____ Softball
b. ____ Basketball	j. ____ Swimming
c. ____ Cheerleading	k. ____ Tennis
d. ____ Cross-Country	l. ____ Track and Field
e. ____ Field Hockey	m. ____ Volleyball
f. ____ Football	n. ____ Weight-lifting
g. ____ Golf	o. ____ Wrestling
h. ____ Soccer	p. ____ Other _____.

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10. Do you have an official written policy regarding athletes with disabilities, aside from standard ADA requirements?

- a. Yes (If so, please enclose the policy when you return the survey.)
- b. No

Comments: _____

11. Do you currently have, or have you had since January 1, 1998, any disabled students participating in sports at your institution?

- a. Yes
- b. No (If not, go to question 13.)

12. Please check the space next to the sport the disabled student played, describe the type of disability, and indicate whether an accommodation was made for the disabled student.

	SPORT	DISABILITY	ACCOMMODATION
a.	<input type="checkbox"/> Baseball	_____	_____
b.	<input type="checkbox"/> Basketball	_____	_____
c.	<input type="checkbox"/> Cheerleading	_____	_____
d.	<input type="checkbox"/> Cross-Country	_____	_____
e.	<input type="checkbox"/> Field Hockey	_____	_____
f.	<input type="checkbox"/> Football	_____	_____
g.	<input type="checkbox"/> Golf	_____	_____
h.	<input type="checkbox"/> Soccer	_____	_____
i.	<input type="checkbox"/> Softball	_____	_____
j.	<input type="checkbox"/> Swimming	_____	_____
k.	<input type="checkbox"/> Tennis	_____	_____
l.	<input type="checkbox"/> Track and Field	_____	_____
m.	<input type="checkbox"/> Volleyball	_____	_____
n.	<input type="checkbox"/> Weight-lifting	_____	_____
o.	<input type="checkbox"/> Wrestling	_____	_____
p.	<input type="checkbox"/> Other	_____	_____

13. If the accommodation was denied, please explain why:

14. Would your institution permit the following accommodations:
(Please check "yes" or "no".)

	Yes	No
Football player with artificial limb.		
Volleyball player with artificial limb.		
Baseball player with artificial limb.		
Basketball player with artificial limb.		
Non-standard size of baseball glove, football shoes, or other sports wear.		
Blind swimmer who touches lane dividers while swimming.		
Deaf basketball player with vibration device to notify him/her when buzzer sounds.		
Learning-disabled students who do not have the required grade point average to play sports.		
Sign language interpreter while (any) game is in play.		
Visual aid indicator at start of track race, for hearing impaired students.		
Football player with HIV/AIDS.		
Wrestler with orthopedic impairment.		
Baseball player with serious emotional disturbance or mental illness.		

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15. If the hypothetical situations presented in question 14 are situations that you personally would be unauthorized to permit; or if you reasonably predict that your institution would not permit the accommodation, please:

a. List the authority (agency name/address) where you would seek permission to accommodate:

_____.

b. And/or, explain why you believe your institution would not permit the accommodation:

_____.

I understand that this questionnaire that I am completing for Donald H. Stone will be used as data for his research and scholarly writing. I give Mr. Stone permission to use direct quotations from this questionnaire at his discretion. I understand that I will retain anonymity in the writing of the article.

Date: _____

Name (please print)

Telephone: _____

Signature

Address:

