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Disabled athlete can't support ADA claim

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An Illinois high school student has filed a petition for a rehearing of a recent 7th U.S. Circuit Court of Appeals decision on a disability discrimination claim against the Illinois High School Association.

In *A.H. v. Illinois High School Association*, No. 17-2456 (7th Cir., Feb. 2, 2018), the 7th Circuit ruled that the Americans with Disabilities Act and the Rehabilitation Act of 1973 do not require the Illinois High School Association to adopt separate para-ambulatory qualifying times for runners with disabilities.

Plaintiff A.H., a student with cerebral palsy, was a member of the Evanston Township High School track and field team.

During his junior year, A.H. requested that the Illinois High School Association create a separate division with separate time standards for para-ambulatory runners in its sectional and state championship track meets and in its annual 5K road race. A.H. also requested that the IHSA allow him to use a modified starting block in the 100-, 200- and 400-meter races.

The IHSA granted A.H.'s request for the modified starting block but denied his request for separate para-ambulatory qualifying time standards. In denying the request, the IHSA relied on guidance from the U.S. Department of Education's Office for Civil Rights, which provides that "students with disabilities must be provided access to extracurricular activities, but ... schools [are] under no obligation to create separate or different activities for the disabled."

The IHSA concluded that A.H.'s request was not reasonable, provided him with an unfair competitive advantage and that A.H. had "the same opportunity to compete in track and field as his nondisabled peers."

In February 2016, A.H. filed a complaint in the U.S. District Court for the Northern District of Illinois seeking an injunction to compel the IHSA to adopt the separate para-ambulatory qualifying times at its sectional and state track meets and at the 5K road race.

Following discovery, the district court granted summary judgment in favor of the IHSA. The court determined that A.H. could not show that the alleged discrimination occurred on the basis of or by reason of his disability and that, even if he could make such a showing, the requested accommodation was not reasonable because it would fundamentally alter the nature of the IHSA's track and field competitions.

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A.H. appealed, and on Feb. 2, the 7th Circuit affirmed the summary judgment in favor of the IHSA. First, the court noted that both the ADA and the Rehabilitation Act prohibit discrimination against individuals with disabilities "on the basis of" or "by reason of" their disability.

Accordingly, for A.H. to prevail on his failure-to-accommodate claim, he would need to prove that "but for" his disability, he would have been able to qualify for the state track meet.

Recognizing that only 10 percent of runners qualify for state each year and that the IHSA's time standards are purposely designed to make individual races competitive for runners both with and without disabilities, the court found the odds overwhelming that runners like A.H. would not have been able to meet the qualifying standards even if they were not disabled.

The court also established that, even if A.H. had made a sufficient showing that "but for" his disability he would have been able to qualify for state, the IHSA was not required to adopt the separate para-ambulatory qualifying standards because such would constitute a "fundamental alteration" of its track and field competitions.

While A.H.'s proposed accommodations would not affect the qualifying times of runners without disabilities, the accommodations would lower the current qualifying times and make it easier for certain runners to qualify for the state track meet.

As the U.S. Supreme Court and 7th Circuit have recognized, the ADA and Rehabilitation Act do not require public entities to lower eligibility or qualifying requirements to accommodate individuals with disabilities.

The court concluded that A.H. currently has the opportunity to compete in the IHSA sectionals meet to qualify for state, as well as an opportunity to compete in the IHSA road race, and that the IHSA is not required under federal law to guarantee A.H. the results he desires from those opportunities.

The court's ruling reaffirmed two key propositions related to disability discrimination claims. First, for a plaintiff to prevail on a failure-to-accommodate claim, the plaintiff must demonstrate that "but for" his or her disability, the plaintiff would have been able to access the service or benefit sought.

Second, particularly in the athletic context, neither the ADA nor the Rehabilitation Act require public entities to lower eligibility or qualifying requirements to accommodate individuals with disabilities.

On Feb. 16, A.H. filed a petition for an en banc rehearing of the 7th Circuit's decision. The petition is currently pending.