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State High School Athletic Association's Limited Participation Rules: Age Limitations

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I. Introduction

If athletics have been prostituted to other than educational ends, let us not throw the baby out with the bath. Let us not in the name of liberal education become empty egg headed. Rather, let us face the fact of our failure to deal decisively with the whole man. Let us confess that the kind of knowledge with which we deal in most colleges and universities does not produce virtue. Let us take seriously the moral perversion of intellectual excellence cut off from universal moral ends defined by even modest demands for fair play in all fascist systems of education. Let us acknowledge we know little about how character is created or sustained, and the critical failure of many colleges to do either. Let us face soberly and seriously the stern moral demands for character in leadership as well as for intellectual freedom.

When we have done this, we will be deeply critical over willful abuse of the playing field for profit, prestige, or power. But we may also be chastened to see the playing fields, since the time of the Greeks, were designed primarily for the perfecting of persons-a perfecting which requires rational discipline as the parent of creative play, sublimation of the self as the setting for cooperation in competition, participation as the mode of integrative understanding, and faithfulness to fair play as conditions for excellence.[1]

II. Voluntary Associations

The National Federation of State High School Athletic Associations (NFSHSAA or National Federation) is a federation of state groups. Organized in 1920 as the Midwest Federation of State High School Athletic Associations with Illinois, Indiana, Iowa, Michigan, and Wisconsin as members. The organization adopted its present title in 1922 when eleven states were represented. The National Federation cooperates with other athletic organizations in writing rules for all sanctioned sports and in acting on national records. Further, the National Federation is the sanctioning of multi-school interstate meets and tournaments to ensure high standards of conduct and adherence to accepted regulations.

On the state level the control and conduct of the interscholastic athletic program is placed in the hands of the state associations. These groups have come into being in order to establish uniform procedures and regulations for interscholastic activities, to protect the welfare of the students, and to establish sensible and educationally sound controls.

As early as 1895 a committee was formed in Wisconsin to establish rules for interscholastic sports. By the mid-1920s most states had asso-

ciations. Today all states have athletic, activity, leagues, or principals' associations that have as a key function the control of interscholastic athletics. The activities of these statewide organizations are not necessarily limited to the field of sports, and the names of the different groups vary markedly.[2]

Most of the state associations are voluntary in nature and are open to accredited public secondary schools. Some states allow private and parochial schools that meet membership requirements to join. The state groups in Michigan and New York are closely affiliated with state departments of education. The associations in Texas, Virginia, and South Carolina have close relationships with the state universities.[3]

In addition to establishing rules and regulations, other activities of state associations may include: (1) interpretation of playing rules; (2) operation of athletic insurance plans; (3) registration and classification of officials; (4) preparation and distribution of publications; (5) conduct of multi-school meets and tournaments; and (6) provision of a judicial service for settling controversies and hearing appeals.[4]

One of the more recent trends in amateur sports litigation involve high school athletic coaches challenging rules which prohibit their participation and/or attendance at camps or programs that specialize in teaching the skills of the sport which they coach interscholastically. Regulations have been instituted to control such overzealous coaches and to equalize interscholastic competition.

Enforcement of state association rules and regulations frequently prohibits athletes from competing and coaches from coaching during the off season, including the summer. Athletes and coaches so affected often bring forth complaints to obtain relief in the form of injunctions. The injunction would force the association to allow participation, and are especially critical to the student-athlete hoping to obtain a college scholarship. Coaches, who rely on summer employment through coaching at camps and recreational areas are limited in some states.

In *Hall v. University of Minnesota*[5] Judge Lord intimates that amateur sports really is not as pure as it used to be. The concept of amateurism began in the 1700's and was a leisure outlet for the upper-case. These amateurs desired no income nor had aspirations for a greater level of notoriety at all from their athletic pursuits. In contrast, present day amateurs have visions of grandeur and greatness. The distinction between amateurs and professionals can become extremely hazy and confused as youth athletes hurdle through the steps to become college stars and possible professional athletes. The higher the athlete climbs, the greater the confusion between amateurism and professionalism.

More and more high school athletes are striving to earn college athletic scholarships and are beginning to specialize in one sport rather than participating in two or three as was the norm. Intercollegiate athletic programs, in many respects, have become a grooming ground for professional sports. This has further clouded the distinction between amateur and professional sports.

The key to the analysis of amateur sports is the status of the amateur athlete. However, the definitions and categorizations are somewhat confusing and contradictory. Since each governing body of sport can and does subscribe to a somewhat different definition of the term amateur. Due to this unique flexibility in America of defining amateur, there is a possibility that an individual can be viewed as an amateur under the rules of the USOC, but not be an amateur under the state high school association rules or the NCAA.

Courts are generally very reluctant to overrule the rules of the athletic associations as regards to eligibility, participation, and discipline of their athletic participants. Generally, courts will not interfere with the internal affairs of voluntary associations. In the absence of mistake, fraud, collusion, or arbitrariness, the decisions of the governing body of the association will be accepted by the courts as conclusive. Voluntary associations may adopt reasonable by-laws and rules which will be deemed valid and binding upon their members unless these rules violate some law or public policy. The courts do not have the responsibility to inquire into the expediency, practicability, or wisdom of these regulations. Further, these general principles apply

to cases that involve amateur athletics including the governing bodies of state high school athletic associations and college sports. Finally, the courts will not substitute their interpretations of the associations, rules and regulations for the interpretations placed on these rules by the association itself, so long as that interpretation is fair and reasonable.[6]

The key question involved in determining whether or not a student athlete is eligible to participate is — who is eligible or not eligible to participate under a particular rule and by-law of the governing association. Eligibility rules cover the whole gamut of interpersonal relationships and characteristics. However, this analysis will target only one aspect of age-eligibility rules.

III. Right to Participate

One of the fundamental questions that must be analyzed relating to eligibility of a student athlete, whether it be interscholastic or intercollegiate, is whether that individual has the right or privilege to participate. If there is a right, then the relationship between the athlete and the controlling organization which administers the competition will be on a much different legal plane than if it were viewed as a privilege. The question generally before the bar is, whether a student athlete in a public institution has a sufficiently important interest in participation in his/her sport so as to require that he/she receive procedural safeguards as required by due process. The threshold question in any inquiry into a claim that an individual has been denied procedural due process is whether the interest asserted by the individual rises to the level of a 'property' or 'liberty' interest protected by the U.S. Constitution and all state constitutions.

When confronted with this precise issue, the overwhelming majority of courts have held that participation in interscholastic or intercollegiate athletics or other extracurricular activities is not a constitutionally protected liberty or property interest.[7] In *Hall v. University of Minnesota*,[8] the court found that there was a limited property interest in participation in intercollegiate sports. However, in *Colorado Seminary v. NCAA*,[9] the Tenth Circuit Court of Appeals held that the interests of student athletes, including those on scholarship, to participate in intercollegiate hockey did not rise to the level of a constitutionally protected right.[10]

Similarly, the majority of state courts rarely find that a right to participate in school athletics is a constitutionally protected interest. [11] As stated in the Supreme Court of Appeals of West Virginia, "participation in interscholastic athletics or other nonacademic extracurricular activities does not rise to the level of a constitutionally protected 'property' or 'liberty' interest."[12]

Furthermore, in interscholastic sports, the courts rarely find that a right to participate exists. Thus, the opportunity to participate in extracurricular activities is not, by itself a property interest, although it appears that under certain circumstances, a high school student can properly establish an entitlement to due process protection in connection with his suspension and exclusion from high school athletics.[13] Finally, on the whole, participation in sports is not a fundamental interest, and therefore, eligibility to participate is not entitled to a strict standard of review by the court.

IV. Constitutional Issues

Under certain circumstances, a student athlete may properly establish an entitlement to due process protection in connection with his suspension and exclusion from high school athletics.[14] Similarly, some students have been able to successfully argue equal protection right in high school athletics.[15] Thus, in reviewing the constitutionality of eligibility regulations two other basic rights need to be considered - due process and equal protection.

A. State Action

State action is any action taken directly or indirectly by a state, local, or federal government for constitutional purposes. Further, action by any public school, state institution of higher education, or any of their officials is construed as state action. Wong[16] indicates that the issue of state action only arises when the defendants argue that they are not directly acting on behave of the government. In addition, to subject a voluntary, private associations to constitutional

limitations, some degree of state action must be present.

There are three common methods of analysis used to determine whether or not state action exists in a particular set of circumstances, including public function theory, entanglement theory, and balancing approach theory. The public function theory is somewhat limited and traditionally confined to essential governmental services that have no counterparts in the public sector (i.e., AT&T which performs an essentially public function but is a private corporation). State high school athletic associations,[17] for the most part voluntary, private associations, have been found state actors under the public function theory. Whereas the NCAA has not been found to be a state actor in a number of cases.[18]

The entanglement theory focuses on the amount of state and/or federal aid directly or indirectly given to the private organization. Wong [19] suggests that for this theory to be used by the court, "total state and/or federal control over the association need not exist. ... state and federal government must only have substantial influence over the association's activities. Further, state and association actions must be intertwined to the extent that the organization's actions are supported or sanctioned by the government."

The balancing approach theory is more general and not widely accepted. The theory suggests if the organizational practices are outweighted by the limitations on asserted/protected rights, courts have found state action and allows judicial intervention for the protection of individual constitutional rights.

B. Due Process

Due process is a procedural process established for the protection and enforcement of private rights. The concept varies from court to court depending on three basic considerations: (1) the seriousness of the infraction, (2) the possible consequences to the institution or organization or individual in question, and (3) the degree of sanction or penalty imposed. There two components of due process — procedural due process which refers to procedures required to ensure fairness, and substantive due process which guarantees basic rights that cannot be denied by government action.

Due process has been used to eliminate regulations that are overbroad in restricting a student athletes protected rights as well as regulations that overlook more feasible alternatives which would be less restrictive of a student athlete's protected liberties.[20] For example, procedural due process is required before a student can be dismissed for misconduct.[21] Students will be granted both notice and an opportunity to be heard prior to disciplinary expulsion because of potential interference with a protected liberty interest.[22]

C. Equal Protection

Equal protection[23], unlike due process, requires only a rational relation to a legitimate state of interest if the regulation neither infringes upon fundamental rights nor burdens an inherently suspect/protected class.[24] It is the constitutional method of checking on the fairness of the application of any law. In *Bell v. Lone Oak Independent School District*,[25] the Texas Supreme Court held that a regulation prohibiting married high school students from participating in interscholastic activities was a violation of the equal protection clause. The court found no logical basis for the so-called married student rule. The right to marry is a basic and fundamental right. The no-marriage rule established a classification of individuals to be treated differently from the remainder of the students without being designed to promote a compelling interest.

V. Legal Concepts

Amateur athletic associations are a pervasive part of American society. Individuals in the United States begin participating in such organizations at an early age (e.g., Pop Warner Football, Youth Soccer, Bidy Basketball, AAU Basketball, Little League Baseball, and Youth Softball) and can continue to do so throughout adulthood (e.g., NFSHSA, NCAA, NAIA, NJCAA, AAU, USOC, Master's programs, Senior Olympics, etc.). There are three legal concepts that are particularly important in the application of the law to the areas of amateur athletics, including

limited injunctive relief, standing, and injunctive relief.

A. Limited Judicial Relief

The concept of limited judicial review[26] derives from a theory that courts should not review every legislative judgement of an organization but rather defer to the organization's decisions. The legal system intervenes as a general rule through judicial review only when (1) legislative actions violate rights guaranteed by the Constitution, (2) rights granted by the institution concerned, and (3) basic notions of fairness. The federal courts, generally, possess a more limited power of review than do state courts.

Amateur athletic associations can guard against judicial scrutiny by revieweing and updating rules and regulations so that they (1) protect the health and welfare of athletes and serve to protect a justifiable public interest, and (2) are consistent with court decisions in the state, region, or nation regarding similar rules.

B. Standing

Standing[27] is a procedural device that must be demonstrated prior to the initiation of any lawsuit. The requirement of standing is based on the theory that all cases brought before the legal system must be part of a current or ongoing controversy. In order to establish standing in court, the plaintiff must meet three criteria:

(1) The plaintiff must demonstrate that the action in question did in fact cause an injury.
(2) The plaintiff must establish that the interest to be protected is at least arguably within that affects an institution, he zone of interests to be protected by the Constitution, legislative enactments, or judicial principles.
(3) The plaintiff must be the party whose interest was infringed upon.

C. Injunctive Relief

An injunction[28] is a court order for one of the parties to a lawsuit to behave in a certain manner. Injunctive relief is designed to prevent future wrongs — not to punish past acts. The injunction is a form of equitable relief that can be used to force an athletic association to engage in or refrain from an action that affects an institution, an individual student-athlete, or a staff member. There are three types of injunctive relief: a temporary restraining order (TRO), a preliminary injunction, and a permanent injunction.

A temporary restraining order is issued to the defendant without notice and is usually effective for a maximum of ten days. The defendant is not bound by the TRO until actual notice is received. After receiving notice, the defendant can immediately ask the court for a review.

A preliminary injunction is granted prior to a full hearing and disposition of the case. The plaintiff is obligated to give the defendant notice and to post a bond. The defendant is usally present at the preliminary injunction hearing.

A permanent injunction may be issued after a full hearing, and if it is issued, it remains in force until the determination of the particular suit.

The judge generally considers three factors before granting or denying any form of equitable relief, including (1) the nature of the controversy, (2) the objective of the injunction, and (3) the comparative hardship or inconvenience to both parties. Further the judge weighs these factors on a sliding scale before making a determination: the more likely a plaintiff is to succeed on the merits of the trail, the less harm needs to be shown to obtain relief. However, if the prospects of success are bleak, a plaintiff would have to show a far greater degree of potential harm before relief would be granted.

VI. Basic Rationale for age-eligibility rules

The fundamental goal of the student-athlete must always be success in the academic area. Unlimited participation in athletic activities subverts this goal and places undue demands on the strident-athlete's time.

Experience has taught that rules are needed to keep excessive athletic competition from imposing upon a student's academic levels to the extent that scholastic development and achievement suffer. Schools must help students maintain a balance between academics, athletics, and

other school programs.

Promoters of non-school programs are generally concerned with specialization, not with a philosophy that fits their program into the perspective of a scheme for total educational development. Many seek to exploit the highly skilled athlete in the name of individual development and recognition under the guise of developing an athlete's potential to secure college scholarships.

Historically, state high school athletic associations have held that continual focus on a single sport may cause high school athletes to miss opportunities to be what they really are: inexperienced persons discovering the world and their abilities and interests through a variety of experiences. Schools also hold the view that commitment to a team teaches lessons about priorities in life and helps students learn to fit into a system that is more important than only their personal, perhaps selfish, frame of reference. Non-school participation rules are designed, therefore, to reinforce these philosophical views, as they:

(1) minimize conflicts of loyalty between school and non-school teams in the same sport during the same season;
(2) reinforce the basis for fairness and equity among student competitors by protecting common opportunities to engage in athletic competition;
(3) protect school teams from outside influence by ensuring that student participants during the school season for a sport do not have such other athletic commitments so that their school teams cannot rely on them;
(4) protect an athlete from exposure to coaching philosophies, strategies, and techniques which are in opposition to those which their school coach is teaching;
(5) protect against potential injury to athletes and the resultant loss of the athlete to the school team; and
(6) protect opportunities for students not involved on a high school team to participate in non-school programs and receive the benefits of athletic competition.

There has been growing evidence of commercialism of high school athletes. In far too many instances, non-school sponsored sporting events have been the "marketplace" where student-athletes have been lured to display their "athletic wares". Experience has revealed that such events tend to divide the allegiance of the student-athletes, undermine their respect for their high school coaches, and encourage the type of adulation which gives the students an exaggerated notion of the importance of their own athletic prowess rather than reinforcing the idea that athletic ability is an endowed talent which students should use for the pleasure and satisfaction that they may derive from athletic competition. By promulgating and enforcing out of season regulations, state high school athletic associations strive to eliminate these abuses.

One of the more recent trends in high school athletic litigation involves an association's restrictions on age (the 19 year-old rule). This regulation varies from state to state in terms of the effective date of the athlete's birthday. Thirty-four of the fifty states and the District of Columbia utilize an effective birth date of August I or September I. [29] There is specific rationale for the application of this regulation. It is reasonable to believe that any high school academic program is designed to permit students to progress through the program prior to reaching the age of nineteen by exercising reasonable effort. In addition, the regulation takes into consideration the physiological and psychological disparity between student-athletes on a given team who might range in age from as low as thirteen or fourteen to as high as nineteen.

Maintaining nineteen as the age limitation for eligibility allows approximately a year and one half for absence due to illness, repetition of a grade level or other delays in any student's completion of a secondary school program. At the same time, it recognizes that the disparity of physical maturity between students aged fourteen or fifteen and those aged nineteen will make a difference in competitive equity and bears upon the younger athlete's safety and welfare.

Historically, the age limit of nineteen, which insures that fourteen and fifteen year old boys and girls will not have to compete against individuals who may be nineteen or older, has been viewed as a reasonable limit to insure the health

and safety of high school students in their interscholastic experiences. Additionally, age limitations curtail the incidence of "red-shirting". A practice by which student-athletes are encouraged to delay their academic programs so they can gain greater physical maturity for athletic purposes. This practice elevates athletic motivation to a wrongful place in the educational system and is unjustifiable.

Closely related to the nineteen year old rule, many states have adopted an eight (8) semester regulation (season participation rule) which bars an athlete from competing in athletics who has been enrolled in grades 9 through 12, for more than eight semesters. This regulation acts to prevent the manipulation of high school athletes either academically or athletically by allowing extended competitions beyond the conventional high school experience. The age, size, experience, skill and ability of students, as well as the need to give all youngsters an opportunity to play, are relevant factors in the athletic associations' judgement.

In sum, the courts generally have ruled that the rationale of the nineteen year old rule or the seasons participation rule is reflective of the goals of state high school athletic associations. The regulations excluding student-athletes from participation interscholastic competition based on age or seasons of competition are usually upheld since they only need to meet a rational basis test.[30] Under normal circumstances, the courts will generally not interfere with the internal affairs of state athletic associations as great deference is paid to the judgement of the specialists who have created the regulation and are therefore best equipped to decide controversies concerning the regulation.

VII. Disabling Conditions

Individuals with physical and learning disabilities face many obstacles in life, including, but not limited to, in the classroom, on the playing field, court, or pool, and in everyday life. When arguing a case based on disabilities there are several issues that need to be addressed.

The first and foremost issue which must be resolved is that which shows that the plaintiff is indeed disabled. The Americans with Disabilities Act (ADA)[31] establishes standards and definitions regarding disabilities which assists the court in establishing a disability. Title II of the ADA ,[32]prohibits discrimination by public entities against individuals with disabilities. Further, it states, "no qualified individual with a disability 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."[33] Within this definition, the ADA further defines qualified individual as, "someone, who, with or without reasonable modifications to rules, policies, or practices, meets the essential eligibility requirements for their participation in programs or activities provided by a public entity."[34] Based on this, the plaintiff must establish that (1) they are disabled; (2) the governing body of the litigating organization is a public accommodation; and (3) they were denied the opportunity to participate in or benefit from services or accommodations on the basis of the disability; and (4) reasonable accommodations could be made which do not fundamentally alter the nature of the activity.

Of late, a new wrinkle has crept into litigation involving state association's nineteen year old rule. This is the application of the American with Disabilities Act (42 U.S.C. Section(s) 12101 et. seq.). The introduction of this Federal legislation has thrown a proverbial monkey wrench into the regulations of state high school athletic associations pertaining to age. Initial challenges to state high school athletic associations' age limitation rule date back to 1991 when the Texas University Interscholastic League was confronted with challenges. In Booth v. El Paso Independent School District (1991), a nineteen year old senior successfully challenged the association's age limitation and was allowed to participate in football. In University Interscholastic League and Bailey

Marshall v. Buchanen (1991), Buchanen successfully obtained a permanent injunction which allowed his participation beyond the age of nineteen. Buchanen, diagnosed as leaming disabled, repeated the first and seventh grade. The court ruled that the University Interscholas-

tic League's nineteen year old rule violated section 504 of the Rehabilitation Act of 1973. The ruling was affirmed on appeal. In Sadler v. University Interscholastic League (1991), a nineteen year old senior's request for injunction was denied.

Sadler had already participated in athletics for four years when he sued under the Americans with Disabilities Act and the Rehabilitation Act. The outcome of T.H. v. Montana High School Association (1992) witnessed the district court directing future courts in Montana not to overrule the Montana High School Association's subsequent decisions relative to age limitation.

The Michigan High School Athletic Association was named as a defendant in a number of cases when the age limitation rule was challenged. In Hoot by Hoot v. Milan School District (1993), injunctive relief was denied. However, in Sandison v. Michigan High School Athletic Association (1995), and McPherson v. Ann Arbor School District (1996), injunctive relief had been granted. In the Sandison case, the judge called the Michigan High School Athletic Association's age regulation "an essential eligibility requirement", but ruled for the plaintiff.

A high school junior, diagnosed with Attention Deficit Disorder (Landers v. West Virginia Secondary School Activities Commission, 1994) and due to be a fifth year senior, was denied participation by the WVSSAC and sought relief. The court held that since the plaintiff had already participated for four years, she need not be granted eligibility as the age limitation rule was applied even-handedly to all.

In Pottgen v. Missouri State High School Association, (1995), the court ruled in favor of Pottgen which was overturned by the Eighth Circuit Court of Appeals. The court found that the Missouri State High School Activities Association had demonstrated that the age limits is an essential eligibility requirement in interscholastic athletics, and the waiver of this standard would constitute a fundamental alteration of the nature of the program.

As a result of these challenges,[35] state high school athletic associations now find themselves justifying their existence as a defender of their rules and regulations.

VIII. Connecticut's Age/ Season Regulation

The eligibility regulation promulgated by the Connecticut Interscholastic Athletic Conference (CIAC) pertaining to age and seasons of play are contained in Article IX, section 11 B of the CIAC By-Laws.[36] This regulation specifically states the pupil shall not have reached his or her nineteenth (19) birthday, except that a player who reaches his or her nineteenth (19) birthday on or after September 1 shall be eligible to compete during the remainder of the school year if he or she is otherwise eligible.

No pupil who has been enrolled in grades 10, 11, or 12 inclusive in any school (member or non-member) shall participate in the same branch of athletics for more than three seasons. Participation is defined as being a member of an athletic team in one or more interscholastic athletic contests during a season.

A. History of Challenges to the Age Regulation in Connecticut

Colleen Atlas[37], a high school student, reached the age of nineteen prior to September 1, 1979. Her being nineteen while still in high school was attributable to her having been placed in a one-year reading readiness program between kindergarten and first grade and to her having repeated the third grade.

The complainant claimed that her ineligibility under the CIAC's nineteen year old rule and its enforcement by Hamden (CT) High School constituted discrimination against her on account of age in violation of Connecticut Public Accommodations Act.[38] Atlas claimed to have suffered general damages because of the deprivation of her opportunity to enjoy athletic competition and the team relationships that competition entails and specific damages in the form of lost opportunities to obtain a college athletic scholarship and that the CIAC ruling has not been uniformly applied to male and female students.

The hearing examiner ruled that the Connecticut Commission on Human Rights and Opportunities did not have jurisdiction in or responsibilities over discrimination in access to

public school activities and programs and subsequently dismissed the complaint on August 20, 1980.[39]

(1) Summary of Key Cases

The age regulation has been challenged in the following cases in Connecticut:

Gionfriddo v. CIAC, No. 8010487, State of Connecticut Commission on Human Rights and Opportunities (1980), No. 01801125A U.S. Office for Civil Rights (1981).

Mark Gionfriddo, a nineteen year old high school senior, filed a complaint with the State of Connecticut Commission on Human Rights and Opportunities in 1980, after being denied a waiver of the CIAC nineteen year old rule. The complainant alleged violations of state statutes because of his age and neurological impairment which led to his being developmentally disabled.

The U.S. Office for Civil Rights (OCR) in Boston initiated an investigation in June of 1980 based on a complaint filed by Gionfriddo. Mark Gionfriddo was a diagnosed special education student filed a complaint citing a violation of the 1973 Federal Rehabilitation Act,[40] and violation of the Age Discrimination Act.[41] The United States Office for Civil Rights advised the CIAC to strongly reconsider its decision of denial of waiver as the OCR stated that the CIAC was in clear violation of Gionfriddo's civil rights based on their preliminary investigation.

In July of 1981, OCR completed its investigation and decided that there were no civil rights violations and found that: participation on the cross country team was not a necessary part of the complainant's educational program; that the application of the nineteen year old rule did not have the effect of perpetuating any past discrimination by the school system; and that the CIAC's nineteen year old rule, which is neutral on its face, does not operate to disproportionately disqualify handicapped students from interscholastic competition; rather the rule affects both handicapped and non-handicapped students to a similar degree.

The Connecticut Interscholastic Athletic Conference's nineteen year old rule has been challenged via allegations of violations of the American with Disabilities Act[42] and the Rehabilitation Act.[43]

Dennin and Trumbull Board of Education v CIAC, No. 395CV02637,, U.S. District Court, New Haven, 1996, 913 F. Supp 663 (D. Conn. 1996), Dismissed 94 F 3rd 96 (Second Circuit)

David Dennin, a nineteen year old student at Trumbull High School with Down Syndrome received judgement in U.S. District Court (CT) to permit him to compete in swimming meets during the 1995-96 season. The CIAC appealed the ruling, contending that the District Court erred in finding the ADA and Rehabilitation Act applicable to the CIAC and in concluding that Dennin was entitled to a preliminary injunction requiring Dennin to compete. The Appeals Court stated: "We do not reach the merits of these issues because thel995-96 swim season having ended on March 2, 1996, and the plaintiffs having represented that they will not seek such a waiver of the CIAC nineteen year old rule for future seasons, the present appeal is moot. We accordingly dismiss the appeal and instruct the district court to dismiss he complaint."

The appeals court, further, stipulated that the appeal had become moot by the passage of time, without fault on the part of the CIAC. Accordingly, the court vacated the district court's judgement without reaching the merits of its rulings, and the lower court was directed to dismiss the complaint.

B. History of Challenges of the Season Rule in Connecticut

Connecticut's season rule, in brief, stipulates the ineligibility of students to compete in the same branch of interscholastic athletics for more than three seasons, beginning with the tenth grade.

(1) Summary of Key Cases

The season regulation has been challenged in the following cases[44] in Connecticut:

Duncan et al v. CIAC, No. 042418. Superior Court, J.D. Waterbury, (1976).

Twin brothers, Frederick and Thomas Duncan, both seniors during the school year 1975-76, sought a temporary restraining order from the application of the CIAC season rule. In October 1975, Frederick Duncan received a knee

injury in a football game and through examination, was found to have a condition with his spleen (non-injury related). Thomas, his brother, was then examined and was found to have the same splenic condition. Both were advised by medical personnel not to participate further in contact sports.

In January of 1976, surgery was performed on both twins to alleviate the splenic condition and they returned to school during the 1976-77 school year to complete the twelfth grade and to play football. Both were declared ineligible by way of the CIAC's three season rule. The court upheld the CIAC's regulation and found that standards for eligibility which bear a reasonable relationship to the objectives cannot be said to be capricious, arbitrary, or unjustly discriminating especially when they are acquiesced in by the membership. This case was withdrawn from appeal October 4, 1976.

Moses and Seawright v. Bridgeport Board of EdRichard Mayer (Principal), Bridgeport Central High School and the CIAC, No. 221647, Superior Court, J.D. Fairfield at Bridgeport, (1985).

Bryant Moses and John Seawright, both twelfth grade students, filed for a restraining order after being ruled ineligible by the CIAC rule pertaining to three seasons of competition. Both students filed for the restraining order without exhausting the appeal process of the CIAC, alleging a violation of due process. Both Moses and Seawright had an insufficient amount of credits in Grade 10 (1981-82) and as a result were caused to repeat Grade 10 atcentral High School in Bridgeport. The court issued a temporary restraining order and an order to show cause on January 9, 1985. The same court, on January 22, 1985, granted a motion to dissolve the temporary restraining order which had been issued. The court stated:

> "At first glance it would appear that said rule 11 B is indeed harsh, unjust, inequitable and most severe, yet it is the court's opinion that said rule is consistent with the institutional goals and objectives of the association, and moreover, has been acquiesced in by all the members of said association and must be uniformly enforced in order to avoid unwarranted confusion in the future."

In addition, the court found that the plaintiffs charge that the application of the three season regulation was a violation of due process was without merit. The courts in Connecticut have consistently held that a student's right to participate in interscholastic athletics is not a property right protected by the due process clauses of either the U.S. Constitution or the Constitution of the State of Connecticut.

The court stated:

> "Further, it is axiomatic that anyone who seeks equitable relief must come into court with clean hands. In this case the CIAC's rule provided a mechanism by which the plaintiffs could have appealed for an exception to the eligibility rule. Had their application for an exception been denied, the plaintiffs would have been able to appeal this decision. The plaintiffs, however, chose to ignore this administrative remedy and allowed one-third of the season to pass before applying directly to court for the relief of a temporary restraining order."

Cunningham v. CIAC, No. 17925, (Superior Court, J.D. Waterbury, 1976).

The issue in this case was whether Cunningham should be permitted to play basketball during the 1976-77 academic year. He played the two previous seasons but only briefly and in a few games in 1973-74. Cunningham sought exception to the season rule because he withdrew from school due to a back injury which required surgery. Since he received no academic credit for the 1973-74 school year, he contended that athletic competition should be treated similarly.

The court upheld the semester rule stating that it was legal, just, reasonable and consistent, and further stated that it would not interfere in the affairs of a voluntary association.

IX. Summary

Historically, litigation brought against state

high school athletic associations' regulations pertaining to age and/or semester rules have usually been decided in favor of the athletic associations, unless the regulations were arbitrary, irrational, or capricious or if they infringe on the constitutional rights of the student-athletes. With the passage of the Americans with Disabilities Act, we are witnessing a change of thought on the part of the courts, mandated by law. The right vs. privilege argument has taken on a new meaning of recent date. As determined by the judgement in Dennin v. CIAC, the disabled athlete now has a right of participation as long as the student-athlete's Individualized Education Plan (IEP) lists athletic competition as part of the educational program for that student. In this case, participation in interscholastic athletics is no longer a privilege, but a right guaranteed by Federal legislation.

However, as a general rule, the courts will review a voluntary association's rules only if one of the following conditions are present:

(1) The rules violate public policy because they are fraudulent or unreasonable.
(2) The rules exceed the scope of the association's authority.
(3) The organization violates one of its own rules.
(4) The rules are applied unreasonably or arbitrarily.
(5) The rules violate an individual's constitutional rights.

References

[1] Glenn A. Olds, "In Defense of Sports," *Journal of Health, Physical Education, and Recreation*, January, 1961, pp. 18.

[2] George, Jack F., and Lehman, Harry A. *School Athletic Administration, 12 (1966).*

[3] Id.

[4] Id.

[5] 530 F.Supp. 104 (D.Minn. 1982).

[6] *Kentucky High School Athletic Association v. Hopkins County Board of Education*, 552 S.W.2d 685, 687 (Ky.App.1977). Also See generally W. Champion, Jr., Fundamentals of sport laws 293-295 (1990).

[7] *See Niles v. University Interscholastic League*, 715 F.2d 1027, 1031 (5th Cir.1983); *Hebert v. Ventetuolo*, 638 F.2d 5, 6 (1st Cir.1981); *Walsh v. Louisiana High School Athletic Association*, 616 F.2d 152, 159 (5th Cir.1980); *Dennis J. O'Connell High School v Virginia High School* League, 581 F.2d 81, 84 (4th Cir.1979); *Moreland v. Western Pennsylvania Interscholastic Athletic League*, 572 F.2d 121, 123-24 (3rd Cir.1978); *Colorado Seminary (University of Denver) v. NCCA*, 570 F.2d 320,321 (10th Cir.1978); *Hamilton v. Tennessee Secondary School Athletic Association*, 552 F.2d 681, 682 (6th Cir.1976); *Albach v. Olde*, 531 F.2d 983, 984-85 (10th Cir.1976); *Parish v. NCAA*, 506 F.2d 1028, 1034 (5th Cir.1975); *Mitchell v. Louisiana High School Athletic Association*, 430 F.2d 1155, 1158 (5th Cir.1970); Oklahoma High School Athletic Association v. Bray, 321 F.2d 269, 273 (10th Cir.1963); *Justice v. NCAA*, 577 F.Supp. 356, 366 (D.Ariz.1983); *Park Hills Music Club, Inc. v. Board of Education*, 512 F.Supp. 1040,1043 (S.D.Ohio 1981); *Blue v. University Interscholastic League*, 503 F.Supp. 1030, 1034-35 (N.D.Tex.1980); *Williams v. Hamilton*, 497 F.Supp. 641, 645 (D.N.H.1980); *Ward v. Robinson*, 496 F.Supp. 1, 1-2 (E.D.Tenn.1978); *Kite v. Marshall*, 494 F.Supp. 227, 232 (S.D.Tex.1980), rev'd on the grounds, 661 F.2d 1027 (5th Cir.1981); *Fluitt v. University of Nebraska*, 489 F.Supp. 1194, 1202-03 (D.Neb.1980); *Kulovitz v. Illinois High School Association*, 462 F.Supp. 875, 877-78 (N.D.Ill.1978); *Yellow Springs Exempted Village School District v. Ohio High School Athletic Association*, 443 F.Supp. 753, 758 n.37 (S.D.Ohio 1978), rev'd on other grounds, 647 F.2d 651 (6th Cir.1981); *Dallam v. Cumberland Valley School District*, 391 F.Supp. 358, 361-62 (M.D.Pa.1975); *Stock v. Texas Catholic Interscholastic League*, 364 F.Supp. 362, 364-365 (N.D.Tex.1973); *Taylor v. Alabama High School Athletic Association*, 336 F.Supp. 54, 57 (M.D.Ala.1972); *Paschal v. Perdue*, 320 F.Supp. 1274, 1276 (S.D.Fla.1970); *Scott v. Kilpatrick*, 286 Ala. 129, 133, 237 So.2d 652, 656 (1970); *Florida High School Activities Association v. Bradshaw*, 369 So.2d 398, 403 ((Fla.App.1979); *Smith v. Crim*, 240 Ga. 390, 393, 240 S.E.2d 884, 886 (1977); *Haas v South Bend Community School Corporation*, 259 Ind. 114, 124, 162 N.E.2d 250, 255 (1959), overruled on other grounds, *Haas v. South Bend Community School corporation*, supra; *Kriss v. Brown*, 180 Ind.App. 594, 604, 390 N.E.2d 193, 199-201 (1979); *Kentucky High School Athletic Association v. Hopkins County Board of Education*, 552 S.W.2d 685, 689 (Ky.App.1977); *Chabert v. Louisiana High School Athletic Association*, 312 So.2d 343, 345 (La.App.1975); *Sanders v. Louisiana High School Athletic Association*, 242 So.2d 19, 28 (La.App.1970); *Marino v. Waters*, 220 So.2d 802, 806 (La.App.1969); *NCAA v. Gillard*, 352 So.2d 1072, 1081 (Miss.1977); State ex rel. *Missouri State High School Activities Association v. Schoenlaub*, 507 S.W.2d 543, 359 (Mo.1974); *Menke v. Ohio High School Athletic Association*, 2 Ohio App.3d 244, 245, 441 N.E.2d 620, 624 (1981); *Morrison v. Roberts*, 183 Okl. 359, 361, 82 P.2d 1023, 1024-25 (1938); *Whipple v. Oregon School Activities Association*, 52 Or.App. 419, 423, 629 P.2d 384, 386 (1981); *Caso v. New York State Public High School Athletic Association*, 78 A.D.2d 41, 46, 434 N.Y.S.2d 60, 64 (1980); *Pennsylvania Interscholastic Athletic Association v. Greater Johnstown School District*, 76 Pa.Commw. 65, 71, 463 A.2d 1198, 1201 (1983); *Adamek v. Pennsylvania Interscholastic Athletic Association Inc.*, 57 Pa.Commw. 261, 262, 426

A.2d 1206, 1207 (1981); *Bruce v. South Carolina High School League*, 258 S.C. 546, 551-52, 189 S.E.2d 817, 819 (1972); *Tennessee Secondary School Athletic Association v. Cox*, 221 Tenn. 164, 176, 425 S.W.2d 597, 602 (1968); *Sullivan v. University Interscholastic League*, 599 S.W.2d 860, 863 (Tex.Civ.App.1980). aff'd in part and rev'd in part on other grounds, 616 S.W.2d 170 (Tex.1981); *Starkey v. Board of Education*, 14 Utah 2d 227, 231, 381 P.2d 718,721 (1963); but see *Breden v. Independent School District 742*, 477 F.2d 1292, 1299 (8th Cir. 1973) ("substantial and cognizable" interest justifying application of equal protection principles); *Hall v. University of Minnesota*, 530 F. Supp. 104, 110 (D.Minn.1982) (interest in admission to degree program and potential professional basketball player career sufficient to implicate due process protection); *Barnhorst v. Missouri State High School Activities Association*, 504 F.Supp. 449, 458 (W.D.Mo.1980) (sufficient interest in participation in extracurricular activities to justify application of equal protection principles) and cases cited therein, rev'd on other grounds, 682 F.2d 147 (8th Cir.1982); *Pegram v. Nelson*, 469 F. Supp. 1134, 1140 (M.D.N.C.1979) (Total exclusion from extracurricular activities for a lengthy period of time `could' under certain circumstances be a sufficient deprivation to implicate due process); *Moran v. School District #7*, Yellowstone County, 350 F.Supp. 1180, 1184 (D.Mont.1972) ("right to attend school includes the right to participate in extracurricular activities" justifying application of equal protection principles); *Behagen v. Intercollegiate Conference of Faculty Representatives*, 346 F.Supp. 602, 604 (D.Minn.1972) (economic and educational interest in intercollegiate athletics requires compliance with minimum due process standards); *Kelly v. Metropolitan County Board of Education*, 293 F. Supp. 485, 492 (M.D.Tenn.1980)(equal protection), rev'd on other grounds, 436 F.2d 856 (6th Cir.1970), on remand, 492 F.Supp. 167 (M.D.Tenn.1980); *Lee v. Florida High School Activities Association*, 291 So.2d 636, 638 (Fla.App.1974) (Denial of opportunity to establish athletic eligibility constituted a denial of due process); *French v. Cornwell*, 202 Neb. 569, 571, 276 N.W.2d 216, 218 (1979), citing *Braesch v. DePasquale*, 200 Neb. 726, 732, 265 N.W.2d 842, 845 (1978) (assuming the implication of a liberty or property interest for purpose of determining whether process given was sufficient); *Duffley v. New Hampshire Interscholastic Athletic Association, Inc.*, 446 A.2d 462, 467 (N.H.1982) (right to participate in interscholastic athletics entitled to procedural due process under New Hampshire Constitution); see also Comment, Judicial Review of NCAA Decisions: Does the College Athlete Have a Property Interest in Interscholastic Athletics?, 10 Stetson L.Rev. 483, 499-505 (1981); note, The NCAA, Amateurism, and the Student-Athlete's Constitutional Rights Upon Ineligibility, 15 New Eng.L.Rev. 597, 614-622 (1980).

[8] *See* Supra note 3 at 107.

[9] *Colorado Seminary (University of Denver) v. NCCA*, 570 F.2d 320, (10th Cir.1978)(a case arising in connection with the NCCA's imposition of sanctions against the university for failure to declare several of its players ineligible).

[10] *Id.*

[11] *See* Scott v. Kilpatrick, 237 So. 2d 652, 656 (Ala. 1970); Florida High Sch. Activities Ass'n v. Bradshaw, 369 So. 2d 398, 420-03 (Fla. Dist. Ct. App. 1979); Smith v. Crim, 240 S.E.2d 884, 886 (Ga. 1977); Kriss v. Brown, 390 N.E.2d 193, 199-201 (Ind. Ct. App. 1979); Kentucky High Sch. Athletic Ass'n v. Hopkins County Bd. of Educ., 552 S.W.2d 685, 689 (Ky.Ct.App. 1977); Chabert v. Louisiana High Sch. Athletic Ass'n, 312 So. 2d 343, 345 (La. Ct. App. 1975); Sanders v. Louisiana High Sch. Athletic Ass'n, 242 So. 2d 19, 28 (La. Ct. App. 1970; Marino v. Waters, 220 So. 2d 802, 806 (La. Ct. App. 1969); NCAA v. Gillard, 352 So. 2d 1072, 1081 (Miss. 1977);State ex rel. *Missouri State High School Activities Association v. Schoenlaub*, 507 S.W.2d 543, 359 (Mo.1974); Caso v. New York State Pub. High Sch. Athletic Ass'n, 78 A.D.2d 41, 46 (N.Y. App. Div. 1980); Menke V. Ohio High Sch. Athletic Ass'n, 441 N.E.2d 620, 624 (Ohio Ct. App. 1981); Morrison v. Roberts, 82 P.2d 1023, 1025 (Okla. 1938); Whipple v. Oregon Sch. Activities Ass'n, 629 P.2d 384, 386 (Or.Ct. App. 1981); Pennsylvania Intersch. Athletic Ass'n v. Greater JohnsTown Sch. Dist., 463 A.2d 1198, 1201-02 (Pa. Commw. Ct. 1983); Adamek v. Pennsylvania Intersch. Athletic Ass'n, 426 A.2d 1206, 1208 (Pa. Commw. Ct. 1981); Bruce v. South Carolina High Sch. League, 189 S.E.2d 817, 819 (S.C. 1972); Tennessee Secondary Sch. Athletic Ass'n v. Cox, 425 S.W.2d 597, 602 (Tenn. 1968); Sullivan v. University Intersch. League, 599 S.W. 2d 860, 863 (Tex. Civ. App. 1980), *rev'd in part on the other grounds*, 616 S.W.2d 170 (Tex. 1981); Starkey v. Board of Educ., 381 P.2d 718, 721 (Utah 1963); Bailey v. Truby, 321 S.E.2d 302, 315-16 (W. Va. 1984).

[12] Bailey v. Truby, 321 S.E.2d 302, 316 (W.Va. 1984).

[13] *See Spring Branch I.S.D. v Stamos*, 695 S.W.2d 556, 560, reh overr, app dism'd, 475 US 1001, 89 L.Ed.2d 290, 106 S.Ct. 1170; *Boyd v. Board of Directors of McGhee School District*, 612 F.Supp. 86, 89 (E.D.Ark.1985); *Tiffany v. Arizona Interscholastic Association*, 151 Ariz. 134, 138, 726 P.2d 231, 235, (App.1986).

[14] *See* Boyd v. Board of Directors of McGhee Sch. Dist., 612 F. Supp. 86, 43 (E.D. Ark. 1985); Tiffany v. Arizona Intersch. Ass'n, 726 P.2d 231, 235 (Ariz. Ct. App. 1986); Spring Branch I.S.D. v. Stamos, 695 S.W.2d 556, 560 (Tex. 1985), *appeal dismissed*, 475 U.S. 1001 (1986). *See also* Behagan v. Intercollegiate Conf. of Faculty Representatives, 346 F. Supp. 602, 604 (D. Minn. 1972) (economic and educational interest in intercollegiate athletics require compliance with minimum due process standards); Hall v. University of Minn., 530 F. Supp. 104, 110 (D. Minn. 1982); Pegram v. Nelson, 469 F. Supp. 1134, 1140 (M.D.N.C. 1979) (total exclusion from extracurricular activities for a lengthy period of time could under certain circumsatnces be a sufficient deprivation to implicate

due process); Kelley v. Metropolitan County Bd. of Educ., 293 F. Supp. 485, 492 (M.D. Tenn. 1968), *rev'd on other grounds*, 436 F.2d 856 (6th Cir. 1970), *on remand*, 492 F. Supp. 167 (M.D. Tenn. 1980); French v. Cornwell, 276 N.W.2d 216, 218 (Neb. 1979), (Citing Braesch v. DePasquale, 265 N.W.2d 842, 845 (Neb. 1978)); Duffley v. New Hampshire Intersch. Athletic Ass'n, 446 A.2d 462, 467 (N.H. 1982) (holding that the right to participate in interscholastic athletics merits procedural due process under the New Hampshire Constitution).

[15] Brenden v. Independent Sch. Dist., 447 F.2d 1292, 1299 (8th Cir. 1973) (a "substantial and cognizable" interest justifies application of equal protection principles); Barnhorst v. Missouri State High Sch. Activities Ass'n, 504 F. Supp. 449, 458 (W.D. Mo. 1980) (holding that student may not have a right to participate in athletic competition, but review of request requires equal protection), *rev'd on other grounds*, 682 F.2d 147 (8th Cir. 1982); Moran v. School Dist. #7, Yellowstone County, 350 F. Supp. 1180, 1184 (D. Mont. 1972).

[16] Wong, Glenn M. (1994). Essentials of Amateur Sports Law.(2nd Ed) Westport, CT: Praeger, 201.

[17] See Barnhorst v. Missouri Stae High School Athletic Ass'n, 504 F.Supp. 449 (W.D. Mo. 1980); Yellow Springs Exempted School District v. Ohio High School Athletic Asso'n, 443 F. Supp. 753 (S.D. Ohio 1978), rev'd on other grounds, 647 F. 2d 651 (6th Cir 1981); and Wright v Arkansas Activities Ass'n, 501 F.2d 25 (8th Cir. 1974).

[18] See McDonald V. National Collegiate Athletic Ass'n, 370 F. Supp. 625 (C.D. Calif. 1974); Arlosoroff v. National Collegiate Athletic Ass,n 746 F.2d 1019 (4thCir.1984); Graham v. NCAA, 804 F.2d 953 (6th Cir. 1986); and Karmanos v. Baker, 816 F.2d 258 (6th Cir. 1987).

[19] Supra at Note 16, 202.

[20] W. Champion, Jr., Fundamentals of Sport Law, 307 (1990); *See* also J. Weistart and C. Lowell, The Law of Sports § 1.15 (1979).

[21] Note, Board of Curators of the University of Missouri v. Horowitz: *Student Due Process and Judicial Deference to Academic Dismissals*, 15 Willamette L.Rev. 577 (1979).

[22] *Id.* A "liberty interest" now includes an individual's interest in his or her good name and reputation.

[23] In the following cases, violations of equal protection were found inn the application of an athletic association's rules or decisions: Buckton v. National Collegiate Athletic Ass'n, 366 F. Supp. 1152 (D. Mass. 1973); Indiana High School Athletic Ass'n v. Raike, 329 N.E.2d 66 (Ind.Ct.App. 1975); Rivas Tenorio v. Liga Atletica Interunversitaria, 554 F.2d 492 (1st Cir. 1977); and Howard University v. National Collegiate Athletic Ass'n, 510 F.2d, 213 (D.C. Cir. 1975). In the following cases, violations of equal ptotection were not found in the application of an athletic association's rules or decisions: Mitchell v. Louisianna High School Athletic Ass'n, 430 F.2d 1155 (5th Cir. 1970); Moreland v. Western Pennsylvania Interscholastic Athletic League, 572 F.2d 121 (3rd Cir. 1978); Graham v. NCAA, 804 F.2d 953 (6th Cir. 1986); McHale v. Cornell University, 620 F. Supp. 67 (N.D.N.Y. 1985); Sath v. NCAA, 728 F.2d 1026 (1st Cir. 1984); Jones v. Wichita State University, 698 F.2d 1082 (10th Cir. 1983); Weiss v. Eastern College Athletic Conference, 563 F. Supp. 192 (E.D. Pa. 1983); Giannattasio v. Stamford Youth Hockey Ass'n, Inc., 621 F.Supp. 825 (D.C. Conn. 1985); Zuments v. Colorado High School Activities Ass'n, 737 P.2d 1113 (Colo. Ct. App. 1987); ans Stone v. Kansas State High Activities Ass'n, 761 P.2d 1255 (Kan.App. 1988).

[24] *Champion,* Supra note 3 at 307.

[25] *Bell v. Lone Oak Independent School District*, 507 S.W.2d 636 (Tex.Civ.App.1974), set aside and caused dismd on other grounds, 515 S.W.2d 252.

[26] The courts granted review in the following cases: California State University v. National Collegiate Athletic Ass'n, 47 Cal.App.3d. 533, 121 Cal.Rptr. 85 (Cal.Ct.App. 1975); Estay v. LaFourche Parish School Board, 230 So.2d 443 (La.Ct.App. 1969); Dunham v. Pulsifer, 312 F. Supp. 411 (D.Vt. 1970); and Bunger v. Iowa School Athletic Ass'n, 197 N.W.2d 555 (Iowa Sup.Ct. 1972). The courts denied review in the following key cases: Kentucky High School Athletic Ass'n v. Hopkins County Board of Education, 552 S.W.2d 685 (Ky.Ct.App. 1977); State ex rel. National Junior College Athletic Ass'n v. Luten, 492 S.W.2d 404 (Mo.Ct.App. 1973); Tennessee Secondary School Ass'n v. Cox, 425 S.W.2d 597 (Tenn.Sup.Ct. 1968); Sanders v. Lousiana High School Athletic Ass'n, 242 So.2d 19 (La.Ct.App. 1968); Albach v. Odle, 531 F.2d 983 (10th Cir. 1976); and Colorado Seminary v. National Collegiate Athletic Ass'n, 417 F.Supp. 885 (D.Colo. 1976). For the proposition that harshness by itself is not grounds for judicial review, see the following cases: State v. Judges of Court of Common Pleas, 181 N.E.2d 261 (Ohio Sup.Ct. 1962); Shelton v. National Collegiate Athletic Ass'n, 539 nF.2d 1179 (9th Cir. 1976); and Marino v. Waters, 220 So.2d 802 (La.Ct.App. 1969). For further information, see the following law review articles: Note, "Judicial Control of Actions of Private Association," 76 Harv. L. Rev. 983 (1963); Shuck, "Administration of Amateur Athletes," 48 Fordham L. Rev. 53 (1979); Lowell, "Federal Administrative Intervention in Amateur Athletics," 43 Geo. Wash. L. Rev. 729 (March 1975); and Lowell, "Judicial Review of Rule Making in Amateur Athletics," 5 J.C. & U.L. 11 (1977). Finally, certain federal statutes are commonly cited in an effort to obtain federal court jurisdiction in athletic cases, including 28 U.S.C. section 1343 — Civil Rights and Elective Franchise; and 42 U.S.C. section 1983 — Civil Rights for Deprivation of Rights.

[27] The following cases discuss the substantiality of federal question required for federal court jurisdiction in athletic association cases: Fluitt v. University of Nebraska, 489 F. Supp. 1194 (D. Neb. 1980); Parish v. National Collegiate Athletic Ass'n, 361 F.Supp. 1214 (W.D.La. 1973), aff'd, 506 F.2d 1028 (5th Cir. 1975); National Collegiate Athletic Ass'n v. Califano, 444 F. Supp. 425 (D. Kan. 1978), aff'd, 622 F.2d 1382 (10 th

Cir. 1980); Georgia High School Athletic Ass'n v. Waddell, 285 S.E.2d 7 (Ga.Sup.Ct. 1981); Watkins v. Louisiana High School Athletic Ass'n, 301 So.2d 695 (La.Ct.App. 1974); Florida High School Activities Ass'n v. Bradshaw, 369 So.2d 393 (Fla.Dist.Ct.App. 1979); Assmus v. Little League Baseball, Inc., 334 N.Y.S.2d 982 (N.Y.Sup.Ct. 1972); and Peebles v. National Collegiate Athletic Ass'n, 723 F.Supp. 1155 (E.D.Va. 1988).

[28] Injunctions were denied in the following cases: Thompson v. Barnes, 200 N.W.2d 921 (Minn.Sup.Ct. 1972); Kupec v. Atlantic Coast Conference, 399 F. Supp. 1377 (M.D.N.C. 1975); Florida High School Activities Ass', v. Bradshaw, 369 So.2d 398 (Fla. Ct.App. 1979); and Kite v. Marshall, 661 F.2d 1027 (5th Cir. 1981). Injunctions were granted in the following cases: University of Nevada — Las Vegas V. Tarkanian , 594 P.2d 1159 (Nev.Sup.Ct. 1979); and Hall v. University of Minnesota, 530 F. Supp. 104 (D.Minn. 1982).

[29] Unpublished paper, Wolohan, J. (March 1996). "The Americans with Disabilities Act (ADA) and High School Sports: What Administrators Know? A paper presented to the Society for the Study of Legal Aspects of Sport and Physical Activity Conference in Albuquerque, NM.

[30] Note at , 165.

[31] American Disabilities Act of 1990, §2 et. seq., 42 U.S.C.A. § 12101 et. seq.; Rehabilitation Act of 1973, § 2 et. seq., 29 U.S.C.A. § 710 et. seq.

[32] 42 U.S.C.A. § 12131, et.seq.

[33] 42 U.S.C.A. § 12132, et.seq.

[34] Id., § 12131(2).

[35] The following are additional cases linking age and season rules to disability laws: Robinson v. Illinois High school Association, 195 N.E.2d, 38 (Ill.App. 1963); Oklahoma High School Athletic Ass'n v. Bray, 321 F.2d 269 (10th Cir. 1963); Duncan et al v. CIAC, No. 042418 (Superior Court, J.D. Waterbury ,1976); Mitchell v. Louisiana High School Association, 430 F.2d 1155 (5th Cir. 1970); Bruce v. So. Carolina High School League, 189 N.E.2d 817 (S.C. 1972); Dallam v. Cumberland Valley School District, 391 F. Supp. 358 (M.D.Pa 1975); Cunningham v. CIAC, No. 17925 (Superior Court, J.D. Waterbury, 1976); Albach v. Odle, 531 F.2d 983 (9th Cir. 1976); Doe v.Marshall, 459 F. Supp. 1190 (S.D.Tex. 1978), 457 U.S. 993, 101 S.Ct. 2336, 68 L.Ed.2d 855 (1981); Poole v. So. Plainfield Board of Education, 490 F. Supp. 948 (D.N.J. 1980); Cavallaro v. Ambush, 575 F.Supp. 171 (NY 1983); Alexander v. Choate, 469 U.S. 287, 105 S.Ct. 712, 83 L.Ed.2d 661 (1985); Moses & Seawright v. Bridgeport Board of Education, et. Al., No. 221647 (Superior Court, J.D. Fairfield at Bridgeport (1985); Berschback v. Grosse Point Public School District, 397 N.W.2d 234 (Mich. 1986), Booth v. University Interscholastic League No. A-90-CA-764 (Texas Dist.Ct. 1990); Arkansas Activities Association v. Mayer, 705 S.W.2d 58 (Ark.1991); Sadler v. University Interscholastic League No. A-91-CA-836 (W.D. Tex. 1991); Crocker v. Tennessee Secondary School Athletic Association, 980 F.2d 382 (6th Cir. 1992); T.H. v. Montana High School Association, CV 92-150-BLG-JFB (1992); University Interscholastic League and Bailey Marshal v. Buchanen, 848 S.W.2d 298 (Tex.App. 1993); Hoot by Hoot v. Milan School District, 853 F.Supp. 243 (E.D. Mich. 1994); Landers v. West Virginia Secondary School Athletic Commission, 447 S.E.2d 901 (W.Va. 1994); Pottgen v. Missouri State High Athletic Ass'n, 857 F.Supp. 654 (E.D. Mo. 1994); Johnson v. Florida High School Activities Ass'n, 899 F. Supp. 579 (M.D. Fla. 1996); Reeves v. Mills, 904 F.Supp. 120 (W.D.N.Y. 1995); Sandison v. Michigan High School Athletic Association, Inc., 64 F.3d 1026 (6th Cir. 1995); Dennin and Trumbull Board of Education v. CIAC, No. 395CV02637 (U.S. District Court, New Haven, 1996); and McPherson v. Michigan High School Athletic Association, 90 F.3d 124 (6th Cir. 1996)

[36] CIAC Handbook, 1996-97.

[37] Atlas v. Hamden High School, CIAC, N0. 7930381, State of Connecticut Commission on Human Rights and Opportunities (August 1980).

[38] C.G.S., 53-55.

[39] Id.

[40] 29 U.S.C. section 794.

[41] 42 U.S.C. section 6101.

[42] 42 U.S.C. section 12101 et.seq.

[43] 34 C.F.R. section 104, 42 U.S.C. section 1983.

[44] Selected listing of cases for age and season regulations: Rhodes v. Ohio High School Athletic Ass'n, 939 F. Supp. 584 (E.D. Ohio 1966); State of Missouri v. Schoelaub, 507 S.W.2d 354 (1974); Murtaugh v. Nyquist, 358 N.Y.S. 2d 595 (N.Y.Sup.Ct. 1974); Blue v. University Interscholastic League, 503 F.Supp. 1030 (N.D.Texas 1980); Mahan v. Ager, 652 P.2d 765 (OK Sup.Ct. 1982); Nichols v. Farmington Public Schools, 389 N.W.2d 480 (Ct.App.Mich. 1986); Tiffany v. The Arizona Interscholastic Association, Inc., 726 P.2d 231 (Ariz.App. 1986); and Indiana High School Athletic Association, Inc. v. Reyes, 659 N.E.2d 158 (Ind.App.1995).