CIVIL RIGHTS – ATHLETE ELIGIBILITY – HIGH SCHOOL ATHLETIC ASSOCIATION'S EIGHT-SEMESTER ELIGIBILITY REQUIREMENT IS NEUTRAL AND DOES NOT VIOLATE THE AMERICANS WITH DISABILITIES ACT OR REHABILITATIVE ACT – *McPherson v. Michigan High School Athletic Ass'n, Inc.*, 119 F.3d 453 (6th Cir. 1997).

I. INTRODUCTION

High school athletic associations throughout the United States often have an eight-semester limitation for student participation in athletics.[1] The limitation allows for eight semesters of athletic participation beyond the eighth grade.[2]

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1. *See, e.g.*, J.M. v. Montana High Sch., 875 P.2d 1026 (Mo. 1994). In *J.M.*, a Montana high school student was ineligible to play football or wrestle during his senior year of high School. *See J.M.*, 875 P.2d at 233. J.M. was a student who entered high school in 1989 and played freshman high school football. *See id.* Thereafter, J.M.'s family moved in late October 1989 and he attended a new high school encountering academic difficulties that led him to repeating the eighth grade. *See id.* J.M.'s family moved again and he again played high school football. *See id.* J.M. then attempted to play high school football in 1993 but he was ineligible to play under the Montana High School Association's (MHSA) eight-semester athletic participation limitation rule. *See id.* J.M. had played football in 1989, 1990, 1991, & 1992, which equaled eight semesters of high school athletic participation and the maximum number of semesters allowed for participation under the MHSA. *See id.* at 234; *See also*, Rhodes v. Ohio High Sch. Athletic Ass'n, 939 F. Supp. 584 (N.D. Ohio 1996).

In *Rhodes*, Dru Rhodes was an eighteen-year-old senior who wanted to play football during the 1996-97 school year. *See Rhodes*, 939 F. Supp. at 586. However, the 1996-97 school year was equivalent to Dru's ninth and tenth semesters of high school because Dru had enrolled in high school during the 1992-93 school year. *See id.* Under the Ohio High School Athletic Association (OHSAA) rules, a student may only participate in high school athletics during his first eight semesters of high school. *See id.* The court in *Rhodes* went on to say that although Dru was only involved in athletics since 1994, or for seven semesters, Dru was in his ninth semester of high school and therefore, ineligible under the OHSAA rules. *See id.* at 587.

2. The OHSAA rule regarding its eight semester limitation states: "After a student completes the eighth grade, the student shall be eligible [to compete in high school athletics] for a period not to exceed eight semesters taken in order of attendance, whether the student participates or not." *Id.* at 586. Similarly the MHSA rule provides that no student shall be eligible to participate in high school

These limitations are in place to protect student-athletes from the possibility of getting hurt by participating against older, more mature athletes.[3] The limitations also serve to eliminate many abuses that might arise without an eight-semester limitation.[4] An example of such abuses is red-shirting student-athletes early in their athletic career so they can participate when they're older and stronger.[5] To prevent such abuses, high school athletic associations have strictly enforced their eight-semester limitations with few exceptions.[6]

The eight-semester limitation rule has been challenged, both successfully and unsuccessfully, by accusations that

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athletics after his eighth semester of secondary education. *See J.M.*, 875 P.2d. at 1028. A school year consists of two semesters. *See id.* There are a total of eight semesters of eligibility for an athlete, which equates to the first four years of a student's high school career. *See id.*

3. *See* John T. Woloham, *Are Age Restrictions A Necessary Requirement For Participation in Interscholastic Athletic Programs?*, 66 UMKC L. REV. 345 (1997).

4. *See, e.g.*, Indiana High Sch. Athletic Ass'n, Inc., v. Reyes, 659 N.E.2d 158 (Ind. Ct. App. 1996). The Indiana High School Athletic Association's reasoning for implementing an eight-semester rule was to ensure that sports would not play a preeminent role in a student's decision making in high school, that a student would not displace another student who had not played for more than four years, to prevent a student from interfering with the competitive balance of high school athletics and to avoid red-shirting abuses. *See id.* at 165.

5. Red-shirting is when an athlete is purposely kept out of varsity competition in order to extend eligibility. *See* MERRIAM-WEBSTER (1999) (visited March 5, 1999) <http://www.m-w.com/cgi-bin/dictionary>.

6. *See* McPherson v. Michigan High Sch. Athletic Ass'n, 119 F.3d 453 (6th Cir. 1997). In *McPherson*, the court stated that the Michigan High School Athletic Association (MHSAA) had granted waivers in situations where a student with a disability had been ineligible to participate in athletics based on the fact that the student failed to meet the minimum academic standards set by the MHSAA and not by the high school the student attended. *See id.* at 463. The student's high school must have tested the student to determine whether he had a learning disability prior to the student's eighth semester of eligibility. *See id. See also*, Indiana High Sch. Athletic Ass'n, Inc., v. Reyes, 659 N.E.2d 158, 166 (Ind. Ct. App. 1996); Rhodes v. Ohio High Sch. Athletic Ass'n, 939 F. Supp. 585 (N.D. Ohio 1996). The *Reyes* court stated that the Indiana High School Association will determine whether an exception to their eight-semester rule should be applied by considering whether: 1) it is necessary to strictly enforce the rule in order to serve the purpose of the rule; 2) the spirit of the rule has been violated; and 3) there will be an undue hardship inflicted upon the student by enforcing the rule. *See Reyes*, 659 N.E.2d at 166. The Ohio High School Athletic Association (OHSAA) allows for a waiver and appeal process for students contesting the OHSAA eight-semester eligibility rules. *See id.* A student may request a waiver from the commissioner of the OHSAA. *See id.* If the commissioner denies the waiver the student may appeal to the OHSAA Board of Control. *See id.*

the rule violates the Americans with Disabilities Act (ADA) and the Rehabilitation Act.[7] Many of these actions assert that the athletic associations have violated the ADA[8] and Rehabilitative Act[9] because the athletic associations have failed to provide reasonable accommodation for the disabled individuals.[10] A court may provide relief to a plaintiff if the court determines that the athletic association can make a reasonable accommodation in allowing the ineligible athlete to participate in athletics.[11] What is a reasonable accommodation often depends on whether it would be costly or difficult to accommodate a disabled student and whether a waiver would violate the purpose of the eligibility requirement.[12]

An athlete with a valid claim under the aforementioned exception may apply for immediate relief and have the rule prohibiting their participation enjoined.[13] When a court

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7. *See* Adam A. Milani, *Can I Play?: The Dilemma Of The Disabled Athlete In Interscholastic Sports*, 49 ALA. L. REV. 817, 818 (1998).

8. *See* 42 U.S.C.A. § 12132 (West 1998).

9. *See* 29 U.S.C.A. § 794 (West 1998).

10. *See* Milani, *supra* note 7, at 870. Some courts have stated that there can be no reasonable accommodation because any waiver of an eligibility rule constitutes a fundamental alteration of an athletic program. *See id.* Other courts have stated there should be a case-by–case analysis to determine whether allowing a waiver would violate the essence of the eligibility requirement. *See id.* at 871.

11. *See* Dennin v. Connecticut Interscholastic Athletic Conference, Inc., 913 F. Supp. 666 (2nd Cir. 1996). In *Dennin*, the court ruled that a reasonable accommodation for 19 year-old athlete, who was ineligible under the age requirement, was appropriate because the waiver did not violate the purpose of the rule. *See id.* at 671.

12. *See* Milani, *supra* note 7, at 885. Courts that do not allow a plaintiff to use a reasonable accommodation to circumvent eligibility requirements often state that to allow such accommodations would inflict an undue burden on schools. *See id.* These schools would have to do an individualized analysis for each ineligible athlete who wishes to participate in sports in order to determine whether allowing the athlete to participate would provide the school's athletic teams with an unfair competitive advantage. *See id.* On the other hand, courts that allow a reasonable accommodation state that the plaintiff must meet the initial burden of proving that an accommodation would be reasonable in their case. *See id.* Then the defendant must demonstrate that it would be an undue hardship to allow the student to participate in athletics or a waiver will be ordered. *See id.*

13. *See* Douglas Laycock, MODERN AMERICAN REMEDIES 417 (2d. ed. 1994). The traditional approach for deciding whether a preliminary injunction should be issued by the court is whether the court decides (1) that the person requesting the injunction has strong likelihood of succeeding on the merits; (2) that the person may suffer irreparable harm if the injunction is not issued; (3) a balancing of hardships in favor of the person applying for the injunction; and, (4) advancement

awards an athlete injunctive relief from the athletic association's eight-semester rule, a high school may end up forfeiting the games the excepted athlete participated in, if it is later decided that the student should not have been exempt from the association's rules.[14] This note analyzes a situation where an athletic association is trying to ensure that their athletic guidelines are followed to prevent abuses of the eight-semester eligibility rule.[15] *McPherson v. Michigan High School Athletic Ass'n, Inc.*[16] demonstrates the necessity for athletic associations to establish eligibility rules in order to prevent possible "red-shirting abuses" in an efficient and economical manner.[17] Although the majority delivered the proper decision in this case, there is still a need for an appropriate balancing test that would maintain competition while allowing individuals with disabilities the chance to compete.[18]

II. *MCPHERSON V. MICHIGAN HIGH SCHOOL ATHLETIC ASS'N, INC.*, 1919 F.3d 453 (6th CIR. 1997).

A. Facts and Procedural History

Dion McPherson is a high school student who was diagnosed with Attention Deficit Hyperactivity Disorder in

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of public interest which only applies in certain cases. *See id.*

14. *See McPherson*, 119 F.3d at 454. Athletic associations often have clauses in their eligibility rules, which will allow them to forfeit a high school athletic team's game for which an ineligible athlete, under the associations' guidelines, participated in. *See id.* This is so even if there was a court ordered injunction requiring that high school to allow the athlete to participate in athletics. *See id.*

15. *See* McPherson v. Michigan High Sch. Athletic Ass'n, 119 F.3d 453 (6th Cir. 1997).

16. *See id.*

17. *See id.*

18. *See* Patricia A. Solfaro, *Civil Rights-Courts Should Use An Individualized Analysis When Determining Whether To Grant A Waiver Of An Athletic Conference Age Eligibility*, 7 SETON HALL J. SPORT L. 185, 189 (1997). The age/semester limitation implemented by high school athletic associations will often exclude students who have legitimate handicaps that have made them ineligible to participate in athletics. *See id.* Even though many courts find these eligibility rules facially neutral because the student is ineligible due to an age or semester eligibility requirement, these rules have a disproportional impact on the handicapped. *See id.*

September 1994.[19] As a result of the disorder, McPherson had to repeat eleventh grade during the 1993-1994 school year.[20] When McPherson tried out for his high school basketball team in the 1994-1995 school year he was in his ninth and tenth semesters of high school and ineligible under the Michigan High School Athletic Association (MHSAA) eight-semester eligibility requirements.[21] The reason why McPherson waited until his ninth semester to tryout was that McPherson had been ineligible under the Ann Arbor school district's minimum grade requirements.[22]

The MHSAA handbook lists both rules and exceptions that each member must follow.[23] The court pointed out that every member of the MHSAA receives a handbook that outlines certain policies schools are required to follow as members of the association.[24] Contained in this handbook is a provision that limits student-athletes' participation in sports to eight semesters, which the court stated is plainly addressed in the handbook.[25]

The handbook does permit exceptions that would allow a student to participate in athletics beyond the student's eighth semester.[26] Sections 4(B) and 4(C) of the MHSAA

19. *See McPherson*, 119 F.3d at 456. Attention deficit disorder is a syndrome of learning and behavioral problems that is not caused by any serious underlying physical or mental disorder and is characterized especially by difficulty in sustaining attention, by impulsive behavior, and usually by excessive activity. See MERRIAM-WEBSTER (1999) (visited March 5, 1999) <http://www.m-w.com/cgi-bin/dictionary>.

20. *See McPherson*, 119 F.3d at 456.

21. *See id.*

22. *See id.* at 457. However, McPherson had been eligible in several of the previous eight semesters under the MHSAA minimum grade requirement for athletic participation. *See id.* at 463. The Ann Arbor School District sets higher standards for its students and while a student-athlete may be eligible under the MHSAA, a student may still be barred from participation by his or her high school. *See id.*

23. *See id.* at 455. McPherson's school district, Ann Arbor, agreed that they would abide by the goals and rule set forth by the MHSAA. *See id.*

24. *See McPherson*, 119 F.3d at 455.

25. *See id.* The MHSAA Handbook states "[a] student shall not compete in any branch of athletics who has been enrolled in grades nine to twelve, inclusive, for more than eight semesters." *Id.* at 453.

26. *See id.* The exception's to the eight-semester rule state that the executive committee of the MHSAA may allow a student to participate despite the fact that the student's participation in athletics would violate the MHSAA Handbook if the athlete's participation does not offend the purpose of the rule or if the athlete can prove that the association's rule would impose an undue hardship on the student

Handbook outlines the penalties that would be applied to a school that violates the MHSAA rules by allowing ineligible athletes to participate in athletic competition.[27] The penalties include: 1) a team allowing an ineligible player to participate shall forfeit their game to their opponents; 2) an individual or team may have any records and performances deleted; and 3) a team or individual may have to return any team or individual records to the MHSAA.[28] Even if a high school is required by a court restraining order to allow an MHSAA ineligible athlete to participate, the high school may still face the aforementioned penalties.[29]

The MHSAA puts forth various reasons why the eight-semester limitation is enforced in athletic competition.[30] The reasons set forth are that the MHSAA committee strives to maintain fair competition among its members and feels that if the rule was not in place member schools would red-shirt some of their players to gain a competitive advantage destroying the philosophy that school is primarily for educational growth not athletic competition.[31] The MHSAA considered the eight-semester rule essential to maintaining competition and allowed for only few exceptions.[32] McPherson did not fit in any of the MHSAA exceptions and applied for a waiver after McPherson's eight semesters of

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or school. *See id.* at 456.

27. *See id.*

28. *See McPherson*, 119 F.3d at 455.

29. *See id.* at 456. According to Section 4(C) of the handbook, if the court's restraining order is thereafter voluntarily vacated, stayed, overturned or if the court concludes that the restraining order was not needed or not justified, the penalties in Section 4(B) of the MHSAA Handbook will apply despite the court ordered injunction. *See id.* at 455.

30. *See* Allan G. Osborne, Jr. and Lisa Battaglino, *Eligibility Of Students With Disabilities For Sports: Implications For Policy*, 105 EDUC. L. REP. 379, 383 (1996). Most states explain that eligibility requirements are necessary to maintain safety and prevent competitive advantages. *See id.*

31. *See McPherson*, 119 F.3d at 456. The term red-shirting means that a student is purposely held back so a player can mature while maintaining eligibility and therefore, compete for the same amount of time as if the student had not red-shirted but now has the advantage of being older and more mature. *See id.*

32. *See id.* The exceptions were applied in situations where a waiver was applied for before the expiration of a students eighth semester of eligibility. *See id.* The previous circumstances where the eight-semester waiver was granted included cases where a student was physically unable to attend school because of medical reasons or was not able to take a full class load and thus, required more than eight semesters to graduate. *See id.*

eligibility had expired.[33]

McPherson filed a waiver request with the MHSAA, which was deemed insufficient.[34] However, the MHSAA did allow McPherson's high school to gather information about his athletic prowess in order to determine if allowing the waiver would be fair.[35] A representative from McPherson's high school provided information to the MHSAA that indicated that McPherson was an average high school basketball player and that his stature was below average when compared to his teammates.[36]

McPherson then applied to the MHSAA for a waiver that would allow him to participate in basketball during the 1994-1995 season.[37] The waiver was denied by the MHSAA.[38] McPherson filed a complaint in federal district court in December 1994 alleging that the MHSAA was in violation of the Americans with Disabilities Act, the Rehabilitation Act of 1973 and the Michigan Handicappers' Civil Rights Act.[39] In addition, McPherson claimed that the MHSAA violated his equal protection rights under 42 U.S.C. 1983.[40] McPherson

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33. *See McPherson*, 119 F.3d at 456. McPherson's eligibility expired when he repeated the eleventh grade because it was during that year that his seventh and eighth semester of eligibility accrued. *See id.*

34. *See id.*

35. *See id.* In considering whether a waiver would be fair in the McPherson case the MHSAA considered whether McPherson would be receiving an opportunity that other students would not have had, if granting the waiver would provide McPherson's high school with a competitive advantage, and whether a favorable decision would result in future abuses by high schools that would set higher grade standards early on in an athlete's career making him ineligible, then lowering the academic standards so the student could be eligible when he was more developed and experienced. *See id.*

36. *See McPherson*, 119 F.3d at 456.

37. *See id.*

38. *See id.* at 457.

39. *See* Milani *supra*, note 7 at 819. The relevant language of Section 504 of the Rehabilitation Act which applies to all schools is: "No otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 29 U.S.C. § 794(a) (1994).

40. *See* 42 U.S.C. A. § 1983 (West 1998).

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws,

requested that the MHSAA be enjoined from prohibiting him from athletic competition and prevented from forcing McPherson's high school to forfeit any games in which he participated.[41]

The district court found that McPherson could reasonably succeed in proving his claims and enjoined the MHSAA from prohibiting him from playing basketball and from forcing his school to forfeit any games he played.[42] However, the court of appeals decided that McPherson did not have a claim under the ADA or Rehabilitative Act and remanded the case back to the district court to render a decision consistent with the court's opinion.[43]

B. Prior Law of Eight-Semester Limitation Regulations

Courts have usually held that the eight-semester rule is an essential requirement.[44] The court's reasoning is that the eight-semester rule is used for maintaining competition and protecting younger athletes from the possibility of getting hurt by more mature and developed older athletes, and is a neutral, rigid rule with little room for accommodation.[45] This interpretation of the rule has had adverse effects on students with handicaps such as learning disabilities.[46] Often,

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shall be liable to the party injured in an action at law, suit in equity, or other proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

Id.

41. *See McPherson*, 119 F.3d at 458.

42. *See id.*

43. *See id.*. at 464.

44. *See* Woloham, *supra* note 3 at 380.

45. *See id.*

46. *See* Christopher W. Lewis, *Athletic Eligibility-Too High A Hurdle For The Learning Disabled* , 15 T.M. COOLEY L. REV. 75, 78-79 (1998). One such effect is that students being held back because of their learning disability will have less eligibility to participate in athletics than athletes without disabilities. *See id.* It has also been noted that handicap athletes who have been held back because of a disability will often times be forced to sit out their senior year which may limit their ability to obtain an athletic scholarship or limit the athletes' ability to participate in college sports due to their inability to stay competitively active in their senior year. *See id.* A learning disabled athlete's ability to obtain a scholarship may be limited by the fact that many college recruiters often recruit athletes in their senior year. *See id.*

students with learning disabilities have had to repeat a year of school.[47] The result is that when these students reach high school their eligibility may be limited because of the eight-semester rule.[48] These handicap student athletes have attempted to circumvent the eight-semester rule by pursuing claims under the ADA and Rehabilitation Act.[49]

There are two relevant portions of the ADA that deal with high school athletic associations, Title II and Title III.[50] If the association is private and operating a place of public accommodation, Title III applies.[51]If the association is public and operating a facility of public accommodation, Title II applies.[52] This note will primarily focus on Title II because it is prevalent in most of the cases dealing with the ADA. The Rehabilitation Act parallels the ADA and has much of the same ADA requirements that are outlined below so if a plaintiff has a claim under the ADA, he or she will likely have a claim under the Rehabilitation Act as well.[53]

In order to overcome an athletic association's eligibility requirements by asserting an ADA claim, a disabled student must prove the following: (1) that he or she is a "qualified individual with a disability"; (2) that he or she is "otherwise qualified" for the athletic activity; (3) that he or she is being excluded from athletic participation "solely by reason of" his or her disability; and (4) that he or she is being discriminated against by a public entity.[54] The third requirement is often the most difficult for a student to prove because courts often find that handicapped student-athletes are excluded because

47. *See McPherson*, 119 F.3d at 456. McPherson had to repeat the eleventh grade because of a learning disability. *See id.*

48. *See* Lewis, *supra* note 46, at 78. Students with learning disabilities are often in slower paced learning programs that may result in the student being held back thus effectively reducing their athletic eligibility. *See id.*

49. *See* Allan G. Osborne, Jr. and Lisa Battaglino, *supra* note 30, at 382. Student athletes have used the ADA and the Rehabilitation Act in attempt to overcome eligibility requirements. *See id.* The students have claimed that such eligibility requirements violated the aforementioned Acts. *See id.*

50. *See* Lewis *supra* note 46, at 82. Title II of the ADA applies to public entities and Title III of the ADA is applicable to private entities. *See id.*

51. *See Sandison*, 64 F.3d at 1036.

52. *See* Lewis *supra* note 46, at 82.

53. *See* Monette v. Electronic Data Sys. Corp., 90 F.3d 1173, 1178 (6th Cir. 1996).

54. *See* Woloham, *supra* note 3, at 354

of the passage of time and not because of their handicap.[55] Furthermore, a disabled student may prove all four elements and still be unable to overcome the eligibility requirements because some courts enforce the requirements if they find they are essential or that waiving the requirements would place an undue burden on the athletic association.[56] Also, courts have stated that the limitations are in place to preserve competition and to protect the younger, immature athletes.[57] The following cases illustrate the evolution of the ADA and how it has been applied to cases involving athletic associations' eligibility requirements.

Case law interpreting the ADA and the Rehabilitation Act has developed mostly in the context of employment discrimination cases.[58] An example of such a case is *Monette v. Electronic Data Systems Corp.*[59] In *Monette*, plaintiff Roger Monette worked as a customer service representative for Electronic Data Systems when he was injured on the job.[60] Monette applied for long-term disabilities but defendant Electronic Data Systems denied this request.[61] He eventually tried to go back to Electronic Data Systems but his old job had been filled during his eight month absence.[62] Monette's supervisor tried to find him another job but he lacked the requisite skills for the positions for which he interviewed.[63] Monette subsequently filed an action stating that his employer discriminated against him in violation of the ADA

55. *See Sandison*, 64 F.3d at 1033. The plaintiff's learning disability did not prevent plaintiff from meeting the athletic association's age requirement. *See id.* Rather it was the passage of time that terminated plaintiff's eligibility. *See id.*

56. *See* Woloham, *supra* note 3, at 354. The Eighth and Sixth Circuits have opined that waiving an athletic association's eligibility requirement may have such a significant impact on the athletic association's programs and that a waiver should not be granted based on this premise. *See id.*

57. *See* Pottgen v. Missouri High Sch. Activities Ass'n, 40 F.3d 926 (8th Cir. 1994). *See also, Sandison*, 64 F.3d at 1034; *McPherson*, 119 F.3d at 461.

58. *See McPherson*, 119 F.3d at 460. The *McPherson* court stated unequivocally that the principles used in applying the ADA in deciding employment discrimination cases may be used in cases were an athletic association's eligibility requirements are being challenged under the ADA. *See id.*

59. *See* Monette v. Electronic Data Sys. Corp., 90 F.3d 1173 (6th Cir. 1996).

60. *See id.* at 1176.

61. *See id.*

62. *See id.*

63. *See Monette*, 90 F.3d at 1176.

and the Michigan Handicapper's Civil Rights Act.[64] Electronic Data Systems was awarded summary judgment on both claims.[65] Monette, however, filed a successful appeal in the United States Court of Appeals for the Sixth Circuit.[66]

The court outlined two ways to analyze claims under these Acts.[67] The analysis depends upon whether the individual has direct or indirect proof that he or she was discriminated against based on the individual's disability.[68] If a plaintiff has direct evidence that he or she was discriminated against based on a disability, the plaintiff must prove: 1) that he or she is disabled and 2) that he or she was qualified for the job despite this disability.[69] The plaintiff must be qualified despite his or her disability with no accommodation from the employer.[70] No essential job requirement may be eliminated from the position or if there is any proposed accommodation, that accommodation must be reasonable.[71] The employer must prove: 1) that a job requirement was essential to the position that plaintiff has applied for and 2) the plaintiff's proposed accommodation would inflict undue hardship on the employer.[72]

If a plaintiff has no direct evidence of discriminatory treatment based on his or her disability, the court stated that the plaintiff may establish a prima facie case of discrimination by demonstrating that: 1) the plaintiff is disabled; 2) the plaintiff was qualified for the position without a reasonable accommodation; 3) he or she received an unfavorable employment decision; 4) the employer had actual or imputed knowledge that plaintiff was disabled; and 5) the position was not filled while the employer tried to obtain other applicants or the plaintiff was replaced.[73]

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64. *See id.*
65. *See id.*
66. *See id.*
67. *See Monette*, 90 F.3d at 1186.
68. *See id.*
69. *See id.* (citing Benson v. Northwest Airlines, Inc., 62 F.3d 1108, 1112 (1995)).
70. *See id.*
71. *See Monette*, 90 F.3d at 1186.
72. *See id.*
73. *See id.* at 1182.

Prior to presenting their analysis, the court stated that there is no general rule that should be applied to all cases, but, instead, the cases should be addressed on an individual basis once the plaintiff proves he or she is disabled.[74] The court determined that Electronic Data Systems relied on Monette's handicap when the defendant decided to replace him.[75] Monette must then show, according to the court, that he could perform the essential functions of the job or propose a reasonable accommodation.[76] The court noted that Monette's proposed accommodation that entailed Electronic Data Systems placing him on permanent disability until another customer service representative or receptionist job opened up.[77] The court reasoned that having an employer hold a job position open for indeterminable amount of time was not a reasonable accommodation in this case.[78] The court stated it was not reasonable because the position of customer service representative is a job that would need to be filled quickly, and the defendant acted reasonably in assuming the applicant may have never returned to the job because he applied for permanent disability benefits.[79] Therefore, the court upheld the summary judgment ruling that the defendant acted reasonably when they permanently filled Monette's job in his absence.[80]

Burns v. City of Columbus, Department of Public Safety, Division of Police, was an employment case where the plaintiff's claim is based upon a violation of the Rehabilitation Act.[81] In *Burns*, the appellate court affirmed the district court's opinion that plaintiff Burns had not put forth any evidence that would substantiate a claim under the

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74. *See id.*
75. *See Monette*, 90 F.3d at 1187.
76. *See id.*
77. *See id.*
78. *See id.* Monette put forth two other instances for which the accommodation that he requested was granted but the court differentiated these two instances from Monette's case. *See id.* at 1188. The court explained that one case involved a manager for the company who had suffered a heart attack and that this employee occupied a position, which was dissimilar to Monette's position. *See id.* The other instance required the company to hold the position open according to the Family Medical Leave Act. *See id.*
79. *See Monette*, 90 F.3d at 1188.
80. *See id.*
81. *See* Burns v. City of Columbus Div. of Police, 91 F.3d 836 (6th Cir. 1996).

Rehabilitation Act.[82]

The court explained that claims under the Rehabilitation Act fall into two categories: 1) cases in which the plaintiff has presented direct evidence of discrimination; and 2) cases where the plaintiff has only presented indirect evidence of discrimination.[83] The court went on to explain that it is often the employer's response to the employee's Rehabilitation Act claim that determines under which category the claim falls.[84] The court explained that the employer will often state whether or not he or she relied on the plaintiff's disability in determining the employment status of the employee.[85] The court stated the standards that are applied where direct evidence of discrimination exists were established in *Monette v. Electronic Data Sys. Corp.*[86]

In *Burns*, the court explained that the plaintiff presented no direct evidence of discrimination, making the McDonnell Douglas/Burdine test applicable.[87] The court stated that the McDonnell Douglas/Burdine test dictates that the plaintiff must prove there is a material issue of fact as to every element of the plaintiff's prima facie case.[88] The appellate court stated that in order to establish a claim under the Rehabilitation Act where there is no direct evidence of discrimination a plaintiff must show: 1) that he or she is handicapped as defined by the Act; 2) the plaintiff is otherwise qualified for the position; 3) he or she is being excluded from, being denied benefits of, or being subject to some kind of discrimination solely because of the plaintiff's handicap; and, 4) that the program the plaintiff is being excluded from is receiving federal funds.[89] This case contrasted with cases where direct evidence was presented, because the issue in direct evidence cases is whether or not the plaintiff was qualified for the position in spite of the employee's handicap with or without a reasonable

82. *See id.* at 840.
83. *See id.* at 842.
84. *See id.*
85. *See Burns*, 91 F.3d at 836.
86. *See id.*
87. *See id.* at 844.
88. *See id.*
89. *See Burns*, 91 F.3d at 841.

accommodation.[90]

The court reasoned that the plaintiff had not established a claim under the Rehabilitation Act in this case because Burns failed to factually prove that he was dismissed for any reason other than his poor performance.[91] The court explained that Burns based his claim on the following facts: 1) he was terminated almost immediately after his intention to seek injury leave; 2) that another officer had previously stated a concern regarding Burn's injury; 3) Burns claimed that he was never reprimanded for his on the job performance and was in fact recommended for advancement; and, 4) that Burns' reprimand relating to his off duty conduct was not a justification for termination.[92] The court countered Burns' contention by stating that four people on the nine person committee had no knowledge of Burns' injury when they terminated him and that no committee members could have based their decision on Burns' disability because his disability did not occur until after the committee made their decision.[93]

Sandison v. Michigan High School Athletic Ass'n is an example of the United States Court of Appeals for the Sixth Circuit applying the ADA and Rehabilitation Act, to athletic associations' eligibility rules.[94] In *Sandison*, plaintiffs Ronald Sandison and Craig Stanley were prohibited from participating on their high school's cross-country and track teams during their senior years in high school because they were nineteen years old.[95]

Ronald Sandison did not start kindergarten until seven years old because he had difficulty processing speech and language.[96] Therefore, as a direct result of his childhood disability, Sandison turned nineteen years old before starting his senior year.[97]

Craig Stanley spent five years in special education due to

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90. *See id.* at 836.
91. *See id.* at 844.
92. *See id.*
93. *See Burns*, 91 F.3d at 845.
94. *See* Sandison v. Michigan High Sch. Athletic Ass'n, 64 F.3d 1026 (6th Cir. 1995).
95. *See id.* at 1028.
96. *See id.*
97. *See id.*

a learning disability, which caused him to enter the fourth grade instead of the fifth grade when he started to attend regular classes.[98] Stanley also turned nineteen before his senior year because he started one grade behind.[99]

The two athletes were ineligible under the MHSAA requirement which stated that an athlete is no longer eligible to participate in high school athletics once the athlete has reached the age of nineteen.[100] The students filed claims of discrimination based on their handicap in district court under the Rehabilitation Act, the ADA, the Equal Protection Clause and the Michigan Handicappers' Civil Rights Act.[101]

The district court issued a preliminary injunction, prohibiting the defendants from preventing the students from participating in cross-country and track.[102] The district court reasoned that the purpose of the MHSAA age limitation are to: 1) ensure the safety of athletes that may suffer by playing against over age and thus, more physically developed athletes; and 2) to negate any unfair competitive advantage that an older athlete may have.[103] The court then decided that since the athletes were competing in noncontact sports and were not star players that a reasonable accommodation could be made by the MHSAA.[104] The district court also enjoined the MHSAA from sanctioning the students' high schools for allowing the athletes to participate in violation of MHSAA eligibility rules.[105] The appellate court overruled the district court's ruling.[106] First, the appellate court addressed the issue of whether the case was moot.[107] The court explained that since the perspective athletes' high schools face possible sanctions from the MHSAA if the MHSAA prevails that there is a live controversy even though the athletes themselves have since graduated and no longer have

98. *See Sandison*, 64 F.3d at 1028.
99. *See id.*
100. *See id.* at 1029.
101. *See id.*
102. *See Sandison*, 64 F.3d at 1029.
103. *See id.*
104. *See id.*
105. *See id.* at 1029.
106. *See Sandison*, 64 F.3d at 1037.
107. *See id.* at 1029-30.

a live legal action.[108]

The court then examined the students' claims under the Rehabilitation Act.[109] The athletes, according to the court, failed to prove all the elements required to assert a claim under the act.[110] Specifically, the students failed to prove that they were discriminated against solely because of their disability and that they were otherwise qualified to participate in athletics.[111]

The court explained that the athletes were not excluded solely because of their disability because the athletes were not disqualified until they reached the age of nineteen.[112] Also, the court stated it was not the plaintiffs' disabilities that prevented them from meeting the eligibility requirement because even without their disabilities the athletes were still ineligible due to their age.[113]

Next, the court stated that the plaintiffs were not "otherwise qualified" to have participated in athletics.[114] "Otherwise qualified," the court stated, is meeting the necessary requirements of a program with a "reasonable accommodation."[115] The court then detailed what is meant by "reasonable accommodation" by explaining what it is not.[116] It is not a reasonable accommodation, the court clarified, if it imposes an undue financial and administrative burden on the accommodating-business or if it requires an essential alteration to the purpose of the program.[117]

The court opined that it was not a reasonable accommodation for the MHSAA to waive their age limitation

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108. *See id.* at 1030.

109. *See id.*

110. *See Sandison*, 64 F.3d at 1030.

111. *See id.* at 1035. In order to maintain a claim under the Rehabilitation Act the plaintiff must prove that: 1) he or she is handicapped as defined by the Act; 2) plaintiff is otherwise qualified for the position; 3) he or she is being excluded from, being denied benefits of or being subject to some kind of discrimination solely because of plaintiff's handicap; and 4) the program the plaintiff is being excluded from is receiving federal funds. *See id.* at 1030.

112. *See id.* at 1032.

113. *See id.* at 1033.

114. *See Sandison*, 64 F.3d at 1034.

115. *See id.* (citing Doherty v. Southern College of Optometry, 862 F.2d 570, 574-75 (6th Cir. 1988).

116. *See id.*

117. *See id.* at 1034. (citing School Bd. v. Arline, 480 U.S. 273, 287 n.17 (1987).

and that the age limitation was an essential requirement of the MHSAA.[118] The court presented three reasons why waiving the requirement was not reasonable in this case.[119] First, the court stated that opening up a sports program to older and more physically mature athletes would fundamentally alter that program.[120]

Second, the court stated it would be an undue burden on high school coaches or physicians to try to ascertain whether, by allowing an older student to participate, the purpose of the sports program is being fundamentally altered.[121] Therefore, the court dismissed the plaintiffs' suggestion that it would be a reasonable accommodation to have allowed them to play since they were not "star athletes."[122]

Finally, the court pointed out the difference between how a "reasonable accommodation" has been used and how the plaintiffs wished to use it in this case.[123] A reasonable accommodation, the court explained, has been used in a way in which an accommodation would allow an individual to overcome his or her disability so he or she could participate in a program.[124] In this case, the court differentiated the way a "reasonable accommodation" is usually used by pointing out that a waiver of the age requirement does not help the athletes overcome a learning disability but instead removes an eligibility requirement that had prevented them from participating in sports.[125]

In addressing the plaintiffs' ADA claim, the court reiterated the fact that a plaintiff must demonstrate much of the same factors in proving an ADA claim as proving a claim under the Rehabilitation Act.[126] With this in mind, the court again concluded that the plaintiffs would not be able to prove that they were excluded "solely by reason of their disability" but rather the court reiterated they were excluded because of

118. *See Sandison*, 64 F.3d at 1034.
119. *See id.* at 1035.
120. *See id.*
121. *See id.*
122. *See Sandison*, 64 F.3d at 1035.
123. *See id.*
124. *See id.*
125. *See Sandison*, 64 F.3d at 1035.
126. *See id.*

their age.[127]

Next, the court explained that the plaintiffs were not likely to succeed in proving that they were "qualified individuals" as defined by the ADA.[128] The court stated that to be a qualified individual a plaintiff must be able to perform with a reasonable accommodation.[129] The court opined that waiving the MHSAA age requirement is not a reasonable accommodation because it would fundamentally alter the bright line age restriction of the MHSAA.[130]

Finally, the court dealt with the plaintiffs' contention that the ADA requires a waiver where a public entity can make reasonable modification to its age requirement rule and that the age requirement rule prevents individuals with disabilities to equally enjoy the athletic programs offered at high schools.[131] The court stated that the plaintiffs were not being excluded based on their disability and that waiving the age requirement was not a reasonable modification.[132] The court opined that the plaintiffs had the opportunity to partake in the high school athletic programs while they were eligible.[133]

III. Analysis Of Main Case

Judge Ryan began the court's analysis by determining whether the McPherson case was moot.[134] In order to determine if an issue is moot it must be determined that the relief sought would effect the legal interests of the parties.[135] The *McPherson* court stated that the issue was not moot because the MHSAA could force McPherson's high school basketball team to forfeit all the games in which McPherson participated.[136] This was a ramification that McPherson

127. *See id.*
128. *See id.* at 1036.
129. *See Sandison*, 64 F.3d at 1037.
130. *See id.*
131. *See* Sandison, 64 F.3d at 1037.
132. *See id.*
133. *See id.* at 1036.
134. *See McPherson*, 119 F.3d at 458. A court cannot review a case that is moot. (*See* Crane v. Indiana High Sch. Athletic Ass'n, 975 F.2d 1315, 1318 (7th Cir.1992)).
135. *See id.* (citing Crane, 975 F.2d at 1318).
136. *See id.* 119 F.3d at 459.

sought to prevent in his district court action.[137] Next, the court analyzed the validity of the lower courts reasoning in granting McPherson a preliminary injunction against the MHSAA.[138]

Judge Ryan explained there are four general elements that the court can weigh to determine if the issuing of a preliminary injunction was an equitable decision.[139] The four factors are (1) "strong likelihood of success on the merits; (2) whether the movant would otherwise suffer irreparable injury; (3) whether issuance of a preliminary injunction would cause substantial harm to others; and (4) whether the public interest would be served by issuance of preliminary injunction."[140]

In order to establish the first factor, McPherson attempted to demonstrate that he would be entitled to relief under both the ADA and the Rehabilitation Act.[141] Both the ADA and Rehabilitation Act basically require the same burden of proof to establish a cause of action.[142]

In order to determine whether McPherson had a cause of action, the court applied the standards established in ADA cases pertaining to the employment field.[143] Those standards

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137. For example, in *Sandison* the court decided that a lower court's preliminary injunction allowing an age-ineligible student to participate in high school athletics and preventing the MHSAA from penalizing a high school by forcing a team to forfeit the games in which the age ineligible athlete participated and deleting the individual athletes accomplishments is not a moot issue. *See Sandison,* 64 F.3d at 1030.

138. *See McPherson,* 119 F.3d at 459.

139. *See id.* at 459.

140. *See id.* (citing *Sandison,* 64 F.3d at 1030).

141. *See id.* at 457.

142. *See id.* The purposes of the ADA and Rehabilitation Act are very similar. *See id.* The language of the Section 504 of the Rehabilitative Act reads as follows, "no otherwise qualified individual with a disability . . . shall, by reason of her or his disability, be excluded from participation in or be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." *See* 29 U.S.C. § 794(a).

Title II of the ADA states, "no qualified individual with a disability shall, by reason of such disability, be excluded from the participation in, be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. The primary distinction between the two acts is that the ADA applies to private entities and the Rehabilitative Act pertains to public entities receiving federal financial assistance.

143. *See McPherson,* 119 F.3d at 460. (citing Roush v. Weastec, Inc., 96 F.3d 840, 843 (6th Cir. 1996); Lyons v. Legal Aid Soc'y, 68 F.3d 1512, 1515 (2d Cir. 1995)). In order to have an ADA claim relating to employment a claimant must

meant that McPherson would have to demonstrate that the MHSAA implemented the eight-semester rule with the purpose of barring students with learning disabilities from participating in athletics, or that the MHSAA could have reasonably accommodated McPherson but chose not to do so.[144]

The *McPherson* court equated the eight-semester limitation to the MHSAA age limitation, which the court considered in *Sandison*.[145] In *Sandison*, the court decided that not allowing a student to participate over the age of 18 was a neutral regulation and was not implemented in order to prevent students with learning disabilities from participating in high school athletics.[146]

Therefore, Judge Ryan stated, McPherson's claims based on the ADA and Rehabilitative Act depended on whether McPherson could demonstrate whether the MHSAA could have reasonably accommodated him but chose not to do so.[147] Judge Ryan went on to explain that since McPherson waited until his ninth semester to participate in basketball, the only reasonable accommodation available to him would require a total waiver of the MHSAA eight-semester regulation.[148] The *McPherson* court adopted the *Sandison* court's position where a total waiver of the age limitation rule was prohibited because it would fundamentally alter the sports program.[149] Judge Ryan stated that the court in

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show (1) disability; (2) that he or she was qualified for the job; and (3) that he or she was not offered the job because of his or her disability or there was no reasonable accommodation offered by the employer that would allow the disabled person to obtain the position. *See id.* at 460.

144. *See id.*

145. *See id.* at 462.

146. *See McPherson*, 119 F.3d at 462. In *Sandison*, the court determined that the MHSAA regulation of excluding students over the age of 18 from participating in high school athletics was not a violation of the ADA. *See Sandison*, 64 F.3d at 1036. The court reasoned that the MHSAA regulation was put in place strictly to limit participation based on age and not to exclude students because they have a disability. *See id.*

147. *See McPherson*, 119 F.3d at 461.

148. *See id.*

149. *See id.* In *Sandison*, the court determined that allowing a reasonable accommodation regarding the MHSAA age limitation restrictions for a student over the age of 18 years is not practical. *See Sandison*, 64 F.3d at 1037. The court stated that determining whether a student over the age of 18 would have an unfair advantage or pose a safety risk to other younger players would not be economically

Sandison determined that if the age restriction requirement was not applied, the face of high school sports would be altered.[150] However, Judge Ryan explained, McPherson contended that the MHSAA eight-semester limitation is fundamentally different from the age limitation rule and that the MHSAA had allowed waivers to the eight-semester rule in the past.[151]

Judge Ryan disagreed with McPherson's assertion that the two MHSAA rules are fundamentally different by explaining that the purpose of the two rules was virtually the same.[152] The purpose of both rules, Judge Ryan contended, was to: 1)protect competition; 2)ensure the safety of athletic participants by limiting the size and physical maturity of athletic participants, and; 3)allow students who comply with the regulations to have a fair chance to compete.[153]

The court went on to state that although the MHSAA has allowed waivers in the past, McPherson's situation was different from such cases.[154] Judge Ryan annunciated that the only reason why McPherson was unable to play basketball prior to his ninth and tenth semesters was because his school district held him to a higher level of academic eligibility than the MHSAA requires.[155] The court explained that the MHSAA was concerned that if a waiver was allowed in this case that other high schools would create

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feasible. *See id.* Furthermore, the MHSAA contended that to allow for an exception to their "bright-line age restriction" would fundamentally destroy one of the purposes of the MHSAA and that their age limitation rule did not eliminate the possibility for a disabled person to participate in athletics. *See id.*

150. *See McPherson*, 199 F.3d at 462.

151. *See id.* at 461.

152. *See id.*

153. *See id.* Judge Ryan stated that this court had previously determined in the *Sandison* case that by not applying an age restriction requirement, the face of high school sports would be altered. *See McPherson*, 199 F.3d at 461. More mature and experienced athletes would be participating with younger athletes. *See id.* An MHSAA expert explained that there are approximately five factors which may give a high school athlete a competitive advantage: chronological age, physical maturity, athletic experience, athletic skill level, and mental ability to process sports strategy. *See Sandison*, 64 F.3d at 1035. Determining whether an athlete over 18 has by virtue of his age gained a competitive advantage in any of the aforementioned areas places an undue burden on the high school's coaching staff and personnel. *See id.*

154. *See McPherson*, 199 F.3d at 463.

155. *See id.*

a situation where they can control the eligibility of their student athletes by declaring the athletes ineligible early on and then later, when the athletes are more mature, find them eligible.[156] The *McPherson* court was sympathetic to the MHSAA's concerns and decided it would be overly burdensome to sort out the legitimate requests to have the eight-semester limitation waived from the illegitimate ones.[157] Therefore, the court decided that the plaintiff's claim would be unsuccessful under the ADA, which in turn equated to an ineffectual petition for relief under the Rehabilitation Act.[158]

Judge Moore authored the dissent in which Judge Merritt concurred.[159] Judge Moore stated that the case was moot because in order for a case to be live there must be an actual controversy; this case lacks the essential adversary.[160] The dissent pointed out that McPherson was no longer an adversary because he had graduated from high school and would never play again for his high school.[161] Judge Moore agreed with the majority's statement that McPherson would not likely be subjected to the same MHSAA conduct.[162] However, Judge Moore disagreed with the majority that the case was not moot based on the fact that the MHSAA had the authority to implement sanctions against McPherson's high school due to his participation on the basketball team.[163] The dissent relied *on Jordan v. Indiana High School Athletic Ass'n, Inc.*[164] to refute the majority's claim that McPherson still had such an interest in the case.[165]

Judge Moore explained that in *Jordan*, the court held that the case was moot because the student who had obtained a preliminary injunction to participate in athletics, in violation

156. *See id.*
157. *See id.*
158. *See McPherson*, 199 F.3d at 463.
159. *See id.* at 464 (Moore, J., dissenting).
160. *See id.* at 465 (Moore, J., dissenting). In order for a case to receive federal adjudication there must be an actual controversy at all times during the review of the case by a federal court. *See id.* (citing Arizonans For Official English v. Arizona, 520 U.S. 43, 66 (1997)).
161. *See id.* at 465 (Moore, J., dissenting).
162. *See McPherson*, 199 F.3d at 465 (Moore, J., dissenting) .
163. *See id.* at 466 (Moore, J., dissenting).
164. 16 F.3d 785 (7th Cir.1994).
165. *See id.* (Moore, J., dissenting) (citing Jordan v. Indiana High Sch. Athletic Ass'n, Inc., 16 F.3d 785 (7th Cir.1994)).

of the Indiana High School Athletic Association's rules, graduated from high school.[166] In addition, Judge Moore stated, that the *Jordan* court found the issue was moot because the high school that would be subject to sanctions, such as forfeiture of all games that the ineligible player participated in, was no longer a party to the dispute.[167]

The dissent opined that the other majority justification for finding a live controversy in this case was that McPherson still had an interest in litigating in order to prevent his performance and his high school's basketball team's records from being erased.[168] Judge Moore explained that whether the dispute is moot or live is unknown, but went on to say that it is unnecessary to decide that issue because McPherson's counsel had argued that the case was moot with respect to her client.[169] Therefore, the dissent explained, because the school district was not a party to the appeal and McPherson considered the case moot, the controversy involved deciding whether applying an injunction against the MHSAA was moot.[170] The dissent stated that the issue of the injunction should be remanded to the district court to decide whether the injunction preventing the MHSAA from punishing the school was a live controversy by determining whether or not the school district was still an interested party.[171] The dissent opined that if, at the time the case was remanded, the school district was still not interested in whether the MSAA sanctions them, than the whole case was moot and the preliminary injunction should have been vacated.[172] If the high school or another interested party wished to litigate over the injunction then the case should be decided on the merits.[173]

IV. CONCLUSION

The court in the *McPherson* case delivered the right

166. *See McPherson*, 119 F.3d at 466 (Moore, J., dissenting).
167. *See id.* (Moore, J., dissenting).
168. *See id.* (Moore, J., dissenting).
169. *See id.* (Moore, J., dissenting).
170. *See McPherson*, 119 F.3d at 467 (Moore, J., dissenting).
171. *See id.* (Moore, J., dissenting).
172. *See id.* at 468 (Moore, J., dissenting).
173. *See id.*

decision based on the goal of maintaining competition and fairness by preventing "red-shirting" abuses that may arise in cases with similar facts. Also, a positive aspect of the case is that it recognized that applying for a waiver after an athlete's eighth semester had expired would lead to many possible abuses.

However, the case fails to establish parameters that would prevent a disabled person who, prior to the expiration of his eighth semester, is diagnosed with a disability. Although, realistically in many instances it may be quite easy to be diagnosed with a disability, certain safeguards can be implemented to prevent abuse.

For instance, a student may only be eligible to participate under a waiver if he is diagnosed with certain disabilities that are apparent at a young age. The disabilities must be of the type that cannot be easily cured by extra help or assistance. This would prevent high school students from putting their education second to athletics in order to participate at a more advanced age to gain a competitive advantage. As an additional safeguard to maintain fairness, a high school should also be required to have approximately the same eligibility requirements as their athletic association.

The court's use of the same rationale when applying the eight-semester rule as when implementing the age requirement rule is incorrect. The eight-semester limitation differs from the age requirement because it is possible to be eighteen years old and have had been in high school for more than eight semesters. Thus, the same concerns that the age limitations address, such as an athlete having an unfair advantage because of his mature age, may not be applicable to an athlete who has used his eight semesters of eligibility. The courts should be aware that by applying the same standards to an athlete who has reached the age of nineteen and to an athlete who has used up his eight semesters of eligibility may result in unjust treatment to the disabled athlete. The court may be unnecessarily limiting the participation of disabled athletes while protecting an athletic association's goals of maintaining fairness that would not be jeopardized by allowing the disabled athlete to participate. In other words, it is apparent that the court could have

established a framework that would have effectively maintained fairness and safety without adopting such a "bright line" rule that is going to result in unfairly excluding disabled athletes.

George Haines