

4-1-2020

Get the Ball Rolling: The Continued Advancement of Adapted and Integrated Sports at Postsecondary Education Institutions

James M. Mitsos

Follow this and additional works at: <https://elibrary.law.psu.edu/pslr>

Recommended Citation

Mitsos, James M. (2020) "Get the Ball Rolling: The Continued Advancement of Adapted and Integrated Sports at Postsecondary Education Institutions," *Penn State Law Review*. Vol. 124 : Iss. 2 , Article 7. Available at: <https://elibrary.law.psu.edu/pslr/vol124/iss2/7>

This Comment is brought to you for free and open access by the Law Reviews and Journals at Penn State Law eLibrary. It has been accepted for inclusion in Penn State Law Review by an authorized editor of Penn State Law eLibrary. For more information, please contact ram6023@psu.edu.

Get the Ball Rolling: The Continued Advancement of Adapted and Integrated Sports at Postsecondary Education Institutions

James M. Mitsos*

ABSTRACT

The United States is a nation portrayed to promote equal opportunity for all. However, despite the public's general concern over race and gender opportunities, it often overlooks opportunities for Americans with disabilities.

Congress passed the Rehabilitation Act of 1973 (Rehab Act) to ensure equal rights for Americans with disabilities. Later, in 1990, Congress passed the Americans with Disabilities Act (ADA) in what appeared to be a conscious effort to finally achieve equality.

Yet, nearly a half-century after the passage of the Rehab Act, there are approximately 21 postsecondary institutions offering athletics to athletes with disabilities—also known as adaptive athletes. This minuscule number is insufficient to sustain the growing population of adaptive athletes and hinders their access to the benefits associated with athletic participation.

This Comment analyzes the effectiveness of the Rehab Act and ADA in increasing access to athletic opportunity at the postsecondary level, with comparisons made to Title IX. The Rehab Act and Title IX—both established by the same governing body with similar intentions of protecting an underrepresented population—have not been equally effective over a similar period. While Title IX has drastically improved athletic opportunities for women, the Rehab Act has not been so successful.

*J.D. Candidate, The Pennsylvania State University, Penn State Law, 2021. I am thankful to all my friends and family, who have shown unwavering support throughout all my endeavors. I am especially thankful to Dr. Brent Hardin, who introduced me to the field of adapted athletics while I was studying at The University of Alabama, as well as my colleagues at the *Penn State Law Review* for their diligent edits and guidance throughout this process. I could not have done it without you all.

Ultimately, this Comment recommends the Department of Education's Office for Civil Rights releases a regulation requiring a more rigorous interpretation of the Rehab Act. Such an interpretation would require postsecondary institutions to support their population of adaptive athletes fully and effectively. This Comment also recommends an expansion to integrated athletics. This expansion would allow adaptive athletes and able-bodied athletes to participate in the same adapted sports. Incorporating integrated athletics at the collegiate level would help eliminate the segregation of athletes and support the overall growth of adapted sports programs.

Table of Contents

I. INTRODUCTION	557
II. BACKGROUND	559
A. Opportunities for American Athletes with Disabilities	560
B. Physical, Social, and Psychological Benefits to Participating in Athletics	560
C. Rehabilitation Act of 1973	562
1. Section 504	564
2. OCR's 2013 Dear Colleague Letter	564
D. Americans with Disabilities Act of 1990	566
1. Title II	566
2. Title III	567
E. Title IX	570
F. Current Status of Adapted Sports Programs	572
1. Primary and Secondary School Level	572
2. Postsecondary Schools	573
G. How Adapted Sports Work	575
III. ANALYSIS	577
A. Promote Health, Happiness, and Participation	578
B. Failure to Include Athletes with Disabilities on Already Established Team Sports	578
C. Insufficient Number of Programs	579
D. Making a Push for Integrated Sports	580
1. More Athlete Participation	582
2. Overcoming Segregation	582
3. Emulating Title IX	583
IV. RECOMMENDATION	584
V. CONCLUSION	585

I. INTRODUCTION

Adaptive athletes in the United States are overshadowed and underrepresented at the collegiate level.¹ Although the United States has experienced a recent movement towards ensuring equal educational opportunities for all,² only 21 universities offer adapted sports for college athletes.³ Notably, even fewer universities offer scholarships to adaptive athletes.⁴ This lack of access for adaptive athletes is astounding given that there are over 1,200 National Collegiate Athletic Association (“NCAA”) institutions. These institutions offer college sports to over 460,000 student-athletes.⁵ The statistics provided do not include the hundreds of thousands of student-athletes who participate in collegiate athletics through lesser-known athletic conferences, such as the National Association of Intercollegiate Athletics (NAIA)⁶ and the National Junior College Athletic Association (NJCAA).⁷ Given the glaring contrast in these figures and the benefits associated with athletic participation, access to adapted sports must improve.

Studies suggest that participating in competitive sports promotes confidence and a healthy lifestyle.⁸ In general, studies demonstrate that participation in sports directly correlates with stronger brain function and academic performance.⁹ As of 2015, there were approximately 2.9 million

1. See GEORGETOWN UNIV. CTR. FOR EXCELLENCE IN DEVELOPMENTAL DISABILITIES, PROCEEDINGS: PHYSICAL ACTIVITY AND SPORT FOR PEOPLE WITH DISABILITIES 3 (Terri Lakowski & Toby Long eds., 2011), <https://bit.ly/2BfAtMx> [hereinafter *Physical Activity and Sport for People with Disabilities*](explaining that adaptive athletes are athletes who participate in competitive sports—modified or adapted—despite the presence of a physical impairment). Therefore, any reference this comment makes to adaptive athletes or athletes with disabilities is referring to athletes with physical disabilities rather than intellectual disabilities.

2. See *Types of Educational Opportunities Discrimination*, U.S. DEP’T JUST., <https://bit.ly/2cFUFWN> (last updated Oct. 15, 2019).

3. See *21 Colleges with Adapted Sports Programs*, ABLETHRIVE (Feb. 3, 2016), <https://bit.ly/32eeDow> [hereinafter *21 Colleges*]; see also *infra* Section II.G. (describing adapted sports). The scope of this comment is only referring to American universities and athletes, unless otherwise stated in the text.

4. *Id.*

5. See *Membership*, NCAA, <https://bit.ly/1T3xje3> (last visited Dec. 28, 2019); see also *Student-Athletes*, NCAA, <https://bit.ly/214vUcO> (last visited Dec. 28, 2019).

6. See *What is the National Association of Intercollegiate Athletics?*, ONLINE CHRISTIAN C., <https://bit.ly/2OFg2jG> (last visited Dec. 28, 2019) (describing the NAIA, which is an athletic association that specializes in small to medium sized colleges).

7. See *Playing Sports in College: Your Options*, BIGFUTURE C. BOARD, <https://bit.ly/33tezJv> (last visited Dec. 28, 2019); see also *About the NJCAA: Mission*, NJCAA, <https://bit.ly/2nBDcMQ> (last visited Dec. 28, 2019) (describing the NJCAA, which is an athletic association that promotes two-year college athletics and offers athletes a place to play before transferring to four-year colleges).

8. *Why is Physical Activity so Important for Health and Wellbeing?*, AM. HEART ASS’N, <https://bit.ly/2m5cUkW> (last updated Jan. 14, 2017).

9. Rumen Halachev, *9 Research Findings That Show Why Education Needs Sport*, EUR. COMMISSION BLOG (Sept. 16, 2016), <https://bit.ly/1QC2VrC>.

Americans with disabilities between the ages of 5 and 17.¹⁰ These Americans will be fighting for the currently restricted opportunity to compete in collegiate-level adapted athletics in the years to come.¹¹ Meanwhile, the number of Americans with disabilities is likely to increase due to advancements in medical science that will allow people to survive conditions they otherwise would not.¹² These medical advancements will promote higher survival rates and longer life expectancy among those who experience impairment-causing diseases, health conditions and injuries.¹³

Currently, Americans with disabilities must rely on the Rehabilitation Act of 1973 (Rehab Act) and the Americans with Disabilities Act of 1990 (ADA).¹⁴ There should be stricter enforcement of the Rehab Act and the ADA to parallel the profound impact of Title IX on women's athletics at the collegiate level.¹⁵ Title IX is similar to the Rehab Act and ADA, but addresses gender rather than disability.¹⁶ Specifically, Title IX prohibits education programs from denying benefits to people on the basis of sex.¹⁷

Title IX's methodology could be applied to adaptive athletes and would likely require major universities to provide and adequately support adapted sports programs.¹⁸ To combat the fear of segregating adaptive athletes from able-bodied athletes, the NCAA (and similar entities) should allow able-bodied athletes to participate in adapted sports under the same restrictions placed on athletes with disabilities.¹⁹

Although there is currently a movement to expose disabled youth to sports at a young age, this movement has been met with considerable

10. *U.S. Disability Statistics by State, County, City and Age*, DISABLED WORLD (last updated June 14, 2018), <https://bit.ly/2nCpJo2>.

11. See *infra* Section II.F.1.

12. *Youth with Disabilities*, UNITED NATIONS – DEP'T ECON. & SOC. AFF. - DISABILITY, <https://bit.ly/2bfzIU7> (last visited Dec. 28, 2019).

13. *Id.*

14. See generally *Laws and Regulations Enforced by OCR*, HHS.GOV, <https://bit.ly/2VAbzk3> (last updated June 1, 2018) [hereinafter *L & R OCR*] (showcasing and defining relevant regulations enforced by the OCR). The Constitution offers little protection for students with disabilities. See Terri Lakowski, *Athletes with Disabilities in School Sports: A Critical Assessment of the State of Sports Opportunities for Students with Disabilities*, 27 B.U. INT'L L.J. 283, 288 (2009) [hereinafter *Lakowski Critical Assessment*]. Because courts have determined that participation in sports is not a fundamental right, it is not protected by the Due Process Clause in the Fifth and Fourteenth Amendments. See *id.* at 289.

15. See generally *Title IX: 5 Ways it Changed Education for the Better*, EVERFI BLOG (last updated Dec. 6, 2019), <https://bit.ly/2M66FYS> [hereinafter *Title IX: 5 Ways it Changed Education for the Better*] (discussing the enormous impact title IX has had on women's education and athletics); see also *infra* Section II.E.

16. See *L & R OCR*, *supra* note 14.

17. 20 U.S.C. § 1681 (2012).

18. See *infra* Section III.D.3.

19. See *infra* Section III.B.2. The author recognizes that this approach may not be possible in sports like adapted swimming or track and field. But the approach certainly has realistic potential for adapted sports such as wheelchair basketball, wheelchair tennis, and sitting volleyball.

barriers.²⁰ For instance, athletes may be discouraged from participating in adapted sports while they are young because of the lack of opportunities to continue to develop or participate at the collegiate level.²¹

Part II of this Comment first discusses the current opportunities for Americans with disabilities²² and addresses the benefits associated with participating in athletics.²³ Part II then examines the status of sports for athletes with disabilities in the United States and the legislation currently in place to protect athletes with disabilities.²⁴ Part III analyzes the relative failure of the current legislation and its impact on adapted sports.²⁵ Part III then goes on to briefly analyze the success that Title IX has had on enhancing opportunities for women both academically and athletically.²⁶ Part IV will then offer concluding statements on the issues raised by this Comment.²⁷

After analyzing the current state of adapted sports, this Comment proposes reforms to provide adaptive athletes more opportunities to compete at the collegiate level.²⁸ These reforms include a clarification of the expectations of postsecondary institutions under the Rehab Act and ADA and legislation regarding implementing integrated sports at the postsecondary education level.²⁹

II. BACKGROUND

An understanding of the great disparity in opportunities available to adaptive athletes as compared to able-bodied athletes is essential to appreciate the need to improve access to adapted sports. This section examines the status of Americans with disabilities and the importance of providing avenues for competition.³⁰ Additionally, this section discusses the policies currently in place to protect the rights of Americans with disabilities.³¹

20. *See infra* Section II.F.

21. *See generally* Greg Shelley, *5 Keys to Motivating Your Athletes (Part I)*, CHAMPIONSHIP COACHES NETWORK, <https://bit.ly/2B1xPtu> (last visited Dec. 28, 2019) (addressing factors that motivate and discourage young athletes).

22. *See infra* Section II.A.

23. *See infra* Section II.B.

24. *See infra* Sections II.C–F.

25. *See infra* Sections III.B–C.

26. *See infra* Section III.D.3.

27. *See infra* Part IV.

28. *See infra* Section III.E.

29. *See infra* Section III.E.

30. *See infra* Section II.A.

31. *See infra* Sections II.C–D.

A. *Opportunities for American Athletes with Disabilities*

Adaptive athletes have not been provided with adequate treatment or opportunities at the collegiate level.³² There are more than 1,200 NCAA institutions, which offer collegiate athletic opportunities to over 460,000 able-bodied student-athletes.³³ These statistics do not include the hundreds of thousands of student-athletes that participate in collegiate athletics through lesser-known athletic conferences unaffiliated with the NCAA.³⁴ These conferences include the National Association of Intercollegiate Athletics (NAIA) and the National Junior College Athletic Association (NJCAA).³⁵

Although the country has experienced a recent surge of support to ensure equal educational opportunities for all,³⁶ only 21 universities currently offer adapted sports to college athletes.³⁷ Even fewer universities provide adaptive athletes with athletic scholarships, and the NCAA provides no funding at all.³⁸ Considering the multitude of opportunities for able-bodied athletes, the scarcity of adapted programs is concerning. The lack of opportunities for adaptive athletes hinders their ability to reap the significant benefits associated with participating in athletics and must change.³⁹

B. *Physical, Social, and Psychological Benefits to Participating in Athletics*

Health-related studies have shown that partaking in athletics leads to a multitude of benefits for the participants.⁴⁰ Unfortunately, countless adaptive athletes cannot benefit from competitive athletics because so few opportunities exist at the postsecondary level. The benefits of postsecondary athletic competition are physical, social, and psychological in nature.⁴¹

The physical benefits derived from athletic participation are perhaps the most obvious.⁴² From as early as grade-school, children learn that an

32. *Physical Activity and Sport for People with Disabilities*, *supra* note 1, at 3.

33. *See supra* note 5 and accompanying text.

34. *See Playing Sports in College*, *supra* note 7.

35. *See id.*

36. *See Types of Educational Opportunities Discrimination*, *supra* note 2.

37. *See 21 Colleges*, *supra* note 3.

38. *See Jennifer Longdon, Adaptive Sports Scholarships: Does Arizona Compete?*, ABILITY360, <https://bit.ly/2op9zir> (last visited Dec. 28, 2018).

39. *See infra* Section II.B.

40. *See Susan Erasmus, 20 Good Reasons to get Moving*, HEALTH24, <https://bit.ly/2M76LiH> (last updated Nov. 11, 2016).

41. *Id.*

42. *See generally* Arlene Semeco, *The Top 10 Benefits of Regular Exercise*, HEALTHLINE (Feb. 10, 2017), <https://bit.ly/2jB8H7h> (discussing the multiple benefits associated with regular exercise, with an emphasis on the physical benefits).

active life leads to stronger bones and muscles.⁴³ Children also learn that an active lifestyle can help control weight and prevent or manage a wide range of health problems.⁴⁴ Such health problems include, but are not limited to heart disease, stroke, and diabetes.⁴⁵ Perhaps more importantly, athletic participation may help individuals deal with daily stress and provides opportunities for social interaction.⁴⁶ For example, from a psychological standpoint, exercise is known to improve mood while reducing depression, anxiety, and stress.⁴⁷ Exercise has also been shown to improve brain function, protect memory, and increase pain tolerance.⁴⁸

Unfortunately, a large number of mental and emotional ailments are seen in people with disabilities, including anxiety and depression.⁴⁹ A 2013 study conducted on 348 participants showed that 62.4% of participants with an orthopedic disability experienced some form of depression.⁵⁰ Depression is a serious medical condition that can lead to significant negative effects on a person's wellbeing.⁵¹ Negative effects from depression include insomnia, feelings of emptiness, trouble with memory, a weakened immune system, and many other ailments.⁵²

Fortunately, exercise can help mitigate symptoms of depression and improve a person's overall mental state.⁵³ For example, the Department of Kinesiology and Community Health at the University of Illinois⁵⁴

43. *See id.*

44. *See id.*

45. *Exercise: 7 Benefits of Regular Physical Activity*, MAYO CLINIC (last updated May 11, 2019), <https://mayoclinic.org/healthy-lifestyle/physical-activity-and-exercise/healthy-diet/0,2053,2xYkrlP,00.html>.

46. Erasmus, *supra* note 40.

47. Semeco, *supra* note 42.

48. *Id.*

49. *See* Ölzem Altındağ et al., *The Association Between Functional Status, Health Related Quality of Life and Depression After Stroke*, 54 *TURK. J. PHYSICAL MED. & REHABILITATION* 89, 89-91 (2008), <https://bit.ly/2rFq1N5>.

50. Özlem Çağan & Alaettin Ünsal, *Depression and Loneliness in Disabled Adults*, 114 *PROCEDIA: SOC. & BEHAV. SCI.* 754, 757 (2014), <https://bit.ly/2QtXerT>. Every participant of the study was a person with a physical disability categorized as either vision, hearing, or orthopedic. *See id.* at 757-58. The results of the study showed that the timing of the disability (at birth or later in life) had almost no effect on the presence of depression in the participants (57.6% experienced depression if the disability was present at birth and 58% experienced depression if the disability had occurred later in life). *See id.* at 757.

51. *See* Ann Pietrangelo & Kristeen Cherney, *The Effects of Depression in Your Body*, *HEALTHLINE* (Sept. 11, 2017), <https://bit.ly/2IHtixL>.

52. *See id.*

53. *See* Semeco, *supra* note 42.

54. The University of Illinois is home of one of the more successful and established adapted sports programs in the country. *See Illini Adapted Athletics History*, ILL. U. DISABILITY DIVISION, <https://bit.ly/2IItRKr> (last visited Dec. 29, 2019). Additionally, the National Academy of Kinesiology recently ranked their Doctoral program in Kinesiology as the best in the nation. U. OF ILL. C. OF APPLIED SCI.: KINESIOLOGY & COMMUNITY HEALTH, <https://bit.ly/3242CSi> (last visited Dec. 29, 2019).

conducted a study in 2016 on the effects of exercise and yoga on people with Multiple Sclerosis.⁵⁵ The study found that both walking and yoga improved the participants' overall mood symptoms.⁵⁶ Further, the study found that walking led to significant improvements in feelings of vigor.⁵⁷ Perhaps most importantly, the study observed that exercise had a significant beneficial effect on a person's experience with "anger, confusion, depression, and tension."⁵⁸

In addition to physical and psychological benefits, physical activity—and sports in particular—can also lead to profound social benefits.⁵⁹ Participating in sports improves social relationships in an organic manner.⁶⁰ Most notably, athletic participation builds lifelong friendships because sports connect like-minded people with similar interests.⁶¹ Competing in sports teaches valuable lessons that participants can use in their careers—including communication, organization, goal-setting, problem-solving, and accountability.⁶²

Corporations look to hire former student-athletes because of the teamwork, leadership, and time-management skills they gain from balancing sports and academics.⁶³ Collegiate athletes are repeatedly placed in situations in which they must adjust or adapt to unforeseen circumstances.⁶⁴ These high-pressure situations teach athletes valuable skills that can be carried into their everyday lives and careers.⁶⁵ Many adaptive athletes do not have the ability to benefit from competitive athletics due to the scarce opportunities at the collegiate level.

C. *Rehabilitation Act of 1973*

Congress, in enacting the Rehab Act, focused on "several substantive areas—employment, education, and the elimination of physical barriers to

55. See I. Ensari et al., *Effects of Single Bouts of Walking Exercise and Yoga on Acute Mood Symptoms in People with Multiple Sclerosis*, 18 INT'L. J. MS CARE 1 (2016), <https://bit.ly/2Q8KsLO>. Multiple Sclerosis is a disease where the immune system eats away at the protective covering of the nerves in a patient's spinal cord and can lead to problems with balance, muscular control and vision. See *Multiple Sclerosis Health Center: What is Multiple Sclerosis?*, WEBMD, <https://wb.md/2E7Y2KY> (last visited Dec. 24, 2019).

56. Ensari et al., *supra* note 55, at 1.

57. *Id.*

58. *Id.*

59. Michelle Kulas, *Social & Emotional Benefits of Regular Exercise*, HEALTHFULLY (Dec. 18, 2018), <https://bit.ly/2wan0Cx>.

60. *Id.*

61. *Id.*

62. Samantha Rosario, *Social and Emotional Benefits of Playing Sports*, WORKINSPORTS BLOG (May 15, 2017), <https://bit.ly/2IEKtCL>.

63. Sara Rondeau, *3 Benefits of Playing College Sports*, NAT'L SCOUTING REP. (Dec. 26, 2016), <https://bit.ly/2IGpLTI>.

64. *Id.*

65. *Id.*

access.”⁶⁶ The Rehab Act requires federally funded programs to provide individuals with disabilities access to institutional programs and activities.⁶⁷ Specifically, regarding athletics, the Rehab Act requires institutions to provide qualified students-students with a disability-equal opportunities to receive the same benefits from the institutions’ athletic programs as students without disabilities.⁶⁸

For athletes with disabilities to claim a school has denied them equal opportunities, under the Rehab Act, the athletes must establish that:

[(1) they] ha[ve] a disability; [(2) they are] otherwise qualified to participate in the athletics program, activity, or benefit in question; [(3) they were] excluded from the athletics program, activity, or benefit solely on the basis of the disability; and [(4) t]his denial was discriminatory because [they] could not be accommodated with reasonable accommodations.⁶⁹

The Rehab Act goes on to explain the parameters courts use on a case-by-case basis to determine whether each case meets the four requirements.⁷⁰

There are two concepts associated with the Rehab Act that address adapted sports.⁷¹ The first concept is Section 504, which explicitly applies to schools of all levels.⁷² The second is the Office for Civil Rights’ (OCR)⁷³ “Dear Colleague” Letter.⁷⁴ The Dear Colleague Letter was issued by the OCR on January 25, 2013, to clarify the responsibilities of schools under the Rehab Act.⁷⁵

66. *Alexander v. Choate*, 469 U.S. 287, 306-07 (1985).

67. *See Rehabilitation Act of 1973*, U.S. ACCESS BOARD, <https://bit.ly/2VAAdghp> (last visited Dec. 28, 2019).

68. *Know Your Rights: Disability in Sports*, ACTIVE POL’Y SOLUTIONS, <https://bit.ly/2nC3u1t> (last visited Dec. 28, 2019) [hereinafter *Know Your Rights*].

69. *Id.*; *see also* *Dennin v. Conn. Interscholastic Athletic Conference, Inc.*, 913 F. Supp. 663, 667 (D. Conn. 1996) (citing *Johnson v. Fla. High Sch. Activities Ass’n*, 899 F. Supp. 579, 582 (M.D. Fla. 1995)).

70. *Know Your Rights*, *supra* note 68.

71. *Id.*

72. *See Protecting Students with Disabilities*, U.S. DEP’T EDUCATION, <https://bit.ly/318DSan> (last updated Sept. 25, 2018).

73. The Office for Civil Rights is a sub-part of the U.S. department of education responsible for ensuring equal access to education in schools throughout the United States. *See Office for Civil Rights*, U.S. DEP’T EDUCATION, <https://bit.ly/2vCb1lL> (last modified Feb. 8, 2019).

74. U.S. DEP’T OF EDUC., OFFICE FOR CIVIL RIGHTS, LETTER FROM SETH M. GALANTER 1 (2013), <https://bit.ly/2MaDYtX> [hereinafter *Dear Colleague Letter*]. Dear Colleague Letters are guiding documents issued by federal agencies (in this case the OCR) that intend to help explain and interpret existing laws and regulations. Ava Bartley, *What are “Dear Colleague” Letters, and Why are They Important?*, FACTOREGON (Dec. 21, 2016), <https://bit.ly/2oZvWlR>. While Dear Colleague letters are not binding, they are typically adhered to because they indicate the rationale the agency will consider when enforcing the law. *Id.*

75. *Dear Colleague Letter*, *supra* note 74, at 1.

1. Section 504

Section 504 of the Rehab Act articulates how the legal framework applies to universities and other academic institutions.⁷⁶ Specifically, Section 504 prohibits programs receiving federal funding from excluding qualified individuals solely because of their disability.⁷⁷ “Program” is defined in Section 504 as “a college, university, or other postsecondary institution, or a public system of higher education.”⁷⁸ Thus, Section 504 applies equally to all institutions of higher education.

Notably, Section 504 does not explicitly refer to athletics,⁷⁹ however, Section 104.37 of the Code of Federal Regulations (CFR) states that the Rehab Act was meant to apply to non-academic programs, including athletics.⁸⁰ Further, CFR Section 104.37 asserts that programs receiving federal funding and providing athletics cannot discriminate based upon a person’s disability.⁸¹ Further, academic institutions shall provide opportunities for students with disabilities to play established sports, or offer alternative athletic activities for students with disabilities.⁸² These alternatives are acceptable as long as the “differentiation is consistent with the requirements of [Section] 104.34” and no qualified student with a disability is only offered this alternative to avoid compliance with part (c)(1) of this section.⁸³ While Section 504 provides a general explanation of rights for students with disabilities,⁸⁴ the Dear Colleague Letter supplements Section 504 by clarifying postsecondary schools’ responsibilities regarding athletes with disabilities under the Rehab Act.⁸⁵

2. OCR’s 2013 Dear Colleague Letter

The OCR is responsible for enforcing Section 504 of the Rehab Act.⁸⁶ The OCR wrote a Dear Colleague Letter in 2013 to clarify the obligations

76. *Protecting Students with Disabilities*, *supra* note 72.

77. 29 U.S.C. § 794(a) (2012) (“No otherwise qualified individual with a disability in the United States . . . 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.”).

78. *Id.* § 794(b)(2)(A).

79. *See* 29 U.S.C. § 794 (2012).

80. Timothy D. McPeters, *The Rehabilitation Act of 1973: Why the OCR’s Small Reminder will Likely Spark Big Change for High School Athletics in 2014 and Beyond*, 25 MARQ. SPORTS L. REV. 413, 421 (2015).

81. *See* 34 C.F.R. § 104.37(c)(1) (2019) (“In providing . . . athletics . . . a recipient [of federal funding] to which this subpart applies may not discriminate on the basis of handicap . . . [and] shall provide to qualified handicapped students an equal opportunity for participation.”).

82. *See id.* § 104.37(c)(2).

83. *Id.*; *see also supra* text accompanying note 81 (explaining part (c)(1) of 34 C.F.R. § 104.37).

84. *See* 29 U.S.C. § 794 (2018).

85. *Know Your Rights*, *supra* note 68.

86. *See Dear Colleague Letter*, *supra* note 74, at 1.

of school districts to provide students with disabilities equal opportunities for participation.⁸⁷ The Dear Colleague Letter addressed the importance of athletics to the overall education, health, and social lives of students.⁸⁸ Importantly, the OCR acknowledged in the Dear Colleague Letter that students with disabilities were not being afforded equal athletic opportunities.⁸⁹

Thus, the OCR explained that institutions must provide reasonable accommodations upon the request of a student with a disability.⁹⁰ Such accommodations are intended to integrate students with disabilities to the fullest extent possible.⁹¹ An accommodation is considered reasonable if: (1) the student requires the accommodation to participate in the sport and (2) the accommodation “would not fundamentally alter the nature of the sport or activity.”⁹² More specifically, a modification is considered fundamental (and therefore unreasonable) if it changes the nature of the activity or gives the athlete with a disability a competitive advantage.⁹³ For example, a disabled swimmer using a prosthetic fin would be a fundamental modification.⁹⁴

In addition to clarifying the Rehab Act, the Dear Colleague Letter enumerates a number of actions schools are prohibited from taking against students under the act.⁹⁵ These actions include, but are not limited to: (1) denying a student with a disability the opportunity to benefit from aid;⁹⁶ (2) affording a student with a disability an opportunity to benefit from aid that is not afforded to other students;⁹⁷ and (3) limiting an individual with a disability from experiencing any right or opportunity enjoyed by others receiving aid.⁹⁸

In addition to the above-mentioned prohibitions, the Dear Colleague Letter outlines three specific practices that schools must follow regarding athletes with disabilities.⁹⁹ These practices include: (1) disregarding stereotypes; (2) ensuring equal opportunity to participate in established athletic programs; and (3) providing separate athletic activities when necessary.¹⁰⁰ The following analysis will focus primarily on the third

87. *See id.*

88. *See id.*

89. *See id.*

90. *Know Your Rights*, *supra* note 68.

91. *See id.*

92. *Id.*

93. *See id.*

94. *See id.*

95. *Dear Colleague Letter*, *supra* note 74, at 3.

96. *See id.*

97. *See id.*

98. *See id.* at 4.

99. *See id.* at 5–11.

100. *See id.*

requirement: offering students with disabilities separate or different athletic opportunities.¹⁰¹

While the OCR's recommendations focused on examples from the primary school and secondary school levels, the Dear Colleague Letter unambiguously applies to postsecondary athletics as well.¹⁰² The Dear Colleague Letter emphasizes that, in addition to equal educational opportunities, students with disabilities must also have equal opportunities to participate in athletics at postsecondary institutions.¹⁰³

Although the Dear Colleague Letter initially seemed like a monumental advancement in adapted sports, later that year the OCR released a report clarifying its intent.¹⁰⁴ This report stated that schools were "encouraged but not required" to create additional opportunities for athletes with disabilities.¹⁰⁵ This interpretation certainly represented a step backward in the fight for equality.

D. *Americans with Disabilities Act of 1990*

Congress passed the ADA in 1990¹⁰⁶ in an effort to ensure that individuals with disabilities had the same rights and opportunities as individuals without disabilities.¹⁰⁷ "This landmark legislation [was intended to] mark a new era for the disabled in our Nation."¹⁰⁸ The ADA provides five titles, each of which relates to a different area of public concern.¹⁰⁹ ADA Titles II and III apply directly to students and adapted sports.¹¹⁰

1. Title II

ADA Title II prohibits disability discrimination in public schools.¹¹¹ Thus, any institution receiving federal or state funding must ensure that students with disabilities are provided with equal opportunities to participate in all programs or activities.¹¹² Similar to the Rehab Act, Title

101. See *infra* Section III.B.

102. See *Dear Colleague Letter*, *supra* note 74, at 2.

103. See *id.*

104. JOHN W. BORKOWSKI ET AL., U.S. DEPARTMENT OF EDUCATION'S OFFICE FOR CIVIL RIGHTS GUIDANCE: AN UPDATE 5 (2016), <https://bit.ly/2MFbjgq>.

105. *Id.*

106. See 42 U.S.C. § 12101 (2018).

107. See *An Overview of the Americans With Disabilities Act*, ADA NAT'L NETWORK, <https://bit.ly/1BqVJcd> (last visited Dec. 29, 2019).

108. 136 CONG. REC. S9684 (daily ed. July 13, 1990) (statement of Sen. McCain).

109. See ADA NAT'L NETWORK, *supra* note 107.

110. See Lakowski, *Critical Assessment*, *supra* note 14, at 289.

111. See 42 U.S.C. § 12132 (2018).

112. Ethan Lievens, *Adaptive Sports: Assessing the Inaugural Year of the ECAC and Adaptive Sport NCAA Championships* *23 (2017) (unpublished M.A. thesis, University of North Carolina at Chapel Hill) (on file with the University of North Carolina at Chapel Hill library).

II strives to ensure that state and local governments are providing equal opportunities to individuals with disabilities.¹¹³ Further, Title II prohibits schools from denying students with disabilities from “the benefits of the services, programs, or activities of a public entity.”¹¹⁴ While Title II addresses public schools directly, Title III addresses the broader topic of public accommodations.

2. Title III

Title III of the ADA prohibits discrimination on the basis of disability.¹¹⁵ However, Title III applies to discrimination in places of public accommodation rather than public schools.¹¹⁶ Public accommodations include: “privately owned, leased, or operated facilities like . . . private schools, day care centers, health clubs, [and] sports stadiums.”¹¹⁷ Notably, Title III extends ADA protections to private schools, thus relating to students and Title II.¹¹⁸

Similar to the requirements of the Rehab Act, places of public accommodation are required to make reasonable modifications, if necessary, to allow people with disabilities to participate in the activities they organize.¹¹⁹ Conversely, accommodations are not required if the accommodations would “(1) result in an undue burden . . . on the entity; (2) fundamentally alter the nature of the . . . activity; or (3) compromise the safety of others [participating in the activity].”¹²⁰

In the context of the ADA, an undue burden is defined as a “significant difficulty or expense.”¹²¹ Some factors considered in determining whether an accommodation qualifies as an undue burden include: the cost of the accommodating action;¹²² the overall financial resources of the site involved;¹²³ and the size and wealth of any parent corporation or entity involved, if applicable.¹²⁴

113. See 42 U.S.C. § 12132 (2018).

114. *Id.*

115. See Lievense, *supra* note 111, at 24.

116. See *id.*

117. ADA NAT’L NETWORK, *supra* note 107.

118. See 42 U.S.C. § 12182 (2012). Titles II and III of the ADA simultaneously work to protect students with disabilities as Title II protects students that attend public schools and Title III has deemed private schools to be places of public accommodation, thus protecting students that attend private schools as well.

119. See *id.*

120. Catherine Hansen-Stamp & Charles R. Gregg, *ADA Title III: Access to Recreation Programs for People with Disabilities – What Does it Mean for Me? . . . An Update*, AM. CAMP ASS’N (Jan. 2006), <https://bit.ly/2YdRMIh>(discussing the impact on Title III of the ADA on public camps and recreational activities, which also apply in a similar manner to public schools and the other public accommodations listed above).

121. 28 C.F.R. § 36.104 (2019).

122. *Id.*

123. *Id.*

124. *Id.*

The second exemption of the reasonable accommodation requirement is whether the proposed accommodation would fundamentally alter the nature of the activity.¹²⁵ Since the enactment of the ADA, case law has helped interpret when an activity is considered to be fundamentally altered.¹²⁶ For example, the United States Supreme Court determined in *PGA Tour, Inc. v. Martin*,¹²⁷ that suspending the Professional Golfers' Association's (PGA) "walking rule," thus allowing the respondent to use a golf cart to account for his disability, did not qualify as a fundamental alteration of the game.¹²⁸

The Court in *Martin* reasoned that there are two avenues by which an alteration could be considered fundamental.¹²⁹ The first avenue is if the alteration distorted an essential aspect of the game that would be unacceptable if the same advantage were not allowed to all competitors.¹³⁰ The second avenue is if the player was given an unfair advantage because of the alteration.¹³¹ Neither of these avenues applied in *Martin*, as the Court determined the walking rule was peripheral to the game rather than essential.¹³²

Conversely, the Massachusetts Supreme Court came to a different conclusion applying a similar framework in *Kuketz v. Petronelli*.¹³³ In *Kuketz*, the court determined that modifying the game of racquetball to allow the defendant two bounces before returning the ball would qualify as a fundamental alteration of the game.¹³⁴ The court reasoned that the modification was fundamental because it ran counter to the "expressly

125. See Hansen-Stamp & Gregg, *supra* note 119.

126. See *id.*

127. *PGA Tour, Inc. v. Martin*, 532 U.S. 661 (2001). For an in-depth analysis on *PGA Tour, Inc. v. Martin*'s effect on cases that followed, see *Lakowski Critical Assessment*, *supra* note 14, at 295–311.

128. *Martin*, 532 U.S. at 683. This case involved a golfer who suffered from Klippel-Trenaunay-Weber Syndrome, which obstructed blood flow from the golfer's right leg to his heart and did not allow him to walk an 18-hole golf course. See *id.* The Court acknowledged that the golfer had a disability as defined by the ADA and that golf courses qualify as public accommodations. *Id.* at 677. Important to the Supreme Court's decision was the fact that nothing in the rules of golf forbid the use of carts or penalized their use. *Id.* at 685. The court concluded with the idea that "pure chance" would have more of an effect on the outcome of elite golf tournaments than enforcement of the walking rule. *Id.* at 687.

129. *Id.* at 682.

130. See *id.*

131. See *id.* at 683.

132. *Id.* at 689.

133. *Kuketz v. Petronelli*, 821 N.E.2d 473, 478 (Mass. 2005). This case involved a nationally ranked wheelchair racquetball player who had joined a health and fitness club and registered to participate in their "A" league. *Id.* While the two bounces he asked for as an accommodation are legal in wheelchair racquetball, the judge determined that it fundamentally altered the game of racquetball as the one bounce is "expressly articulated" in the rules. *Id.* at 479. It was undisputed for the purposes of this case that the plaintiff indeed had a disability, and the club was a place of public accommodation. *Id.* at 477.

134. See *id.* at 479.

articulated” rules of racquetball.¹³⁵ Because the court considered the modification to be fundamental, the defendant was not in violation of the ADA for failing to accommodate Kuketz.¹³⁶

The final exemption of the reasonable accommodation requirement is whether the proposed accommodation would compromise the safety of others.¹³⁷ To determine whether an accommodation would compromise the safety of others:

[A] public accommodation must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: The nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk.¹³⁸

The United States District Court for the District of Maryland explicated this standard in *Blind Industries & Services of Maryland et al. v. Route 40 Paintball Park*.¹³⁹ The court determined that the defendants did not violate the ADA.¹⁴⁰ The defendants’ one-time refusal to allow plaintiffs to play paintball at their facility was due to the possibility “that it would pose a direct threat to the safety of others.”¹⁴¹ The court narrowed its holding to the facts surrounding this particular case.¹⁴² Specifically, the court’s determination was heavily influenced by the fact that the group showed up to the facilities over an hour late.¹⁴³ The late arrival gave the defendant reason to believe there was insufficient time to orient the group to play safely.¹⁴⁴ The court concluded that given adequate time for training,

135. *Id.*

136. *See id.* at 480.

137. Hansen-Stamp & Gregg, *supra* note 119.

138. 28 C.F.R. § 36.208 (2019).

139. *Blind Indus. & Servs. v. Route 40 Paintball Park*, No. WMN-11-3562, 2013 U.S. Dist. LEXIS 40210, at *1 (D. Md. Mar. 21, 2013) (observing where defendants prohibited a group of blind participants from engaging in a group paintball event at the defendants’ facility). To conclude a one-time decision based upon safety concerns, the *Blind Industries* court followed the rationale of the Ninth Circuit ruling in *Lockett v. Catalina Channel Express*, 496 F.3d 1061 (9th Cir. 2007). *Blind Indus. & Servs.*, 2013 U.S. Dist. LEXIS 40210, at *9. In *Lockett*, a ferryboat service refused to sell a blind passenger with a guide dog a ticket to the “Commodore Lounge” due to a policy restricting dogs from the premises based upon a passenger’s allergy to animal dander. *Lockett*, 496 F.3d at 1063. The court determined that the one-time decision under 28 C.F.R. § 36.208 (2012) based upon the safety of another passenger was reasonable and not in violation of the ADA, but it may violate the ADA in the future if the policy is not changed. *Lockett*, 496 F.3d at 1063.

140. *Blind Indus. & Servs.*, U.S. Dist. LEXIS 40210, at *12.

141. *Id.*

142. *See id.* at *4.

143. *See id.*

144. *See id.*

blind individuals could play paintball “at least as safely as many sighted participants.”¹⁴⁵

Importantly, the court stated that “[w]ere [the d]efendant to adopt a policy prohibiting all blind individuals from playing paintball at their facility, that may well violate the ADA.”¹⁴⁶ The ruling in *Blind Industries* exemplifies the fact-intensive inquiry that courts take in determining the potential safety risk imposed in each decision.¹⁴⁷ One can also conclude—through the court’s emphasis on the time constraint—that given enough time, reasonable accommodations can be made for participants with disabilities to ensure the safety of others.¹⁴⁸

E. Title IX

Title IX is similar to the Rehab Act and ADA, but instead deals with gender.¹⁴⁹ All three regulations, the Rehab Act, the ADA, and Title IX, are enforced by the OCR.¹⁵⁰ Specifically, Title IX mandates that federally funded education programs and activities cannot exclude or deny benefits to people on the basis of sex.¹⁵¹ Title IX and the Rehab Act have nearly identical purposes, however, Title IX has been far more successful than the Rehab Act in impacting athletic programs at the collegiate level.¹⁵² Much of this success is due to the OCR’s diligent enforcement of Title IX, specifically requiring schools to ensure that the interests of women at the collegiate level are met “fully and effectively.”¹⁵³

President Nixon signed Title IX into law on June 23, 1972.¹⁵⁴ As a result of Title IX’s passage, female participation in high school sports was six times higher in 1978 than in 1970.¹⁵⁵ This unprecedented growth in female athletic participation spread throughout the collegiate world.¹⁵⁶ Universities, large and small, expanded their women’s sports budgets and programs.¹⁵⁷ The number of women that participate in collegiate athletics

145. *Id.* at *6.

146. *Id.* at *11.

147. *See id.* at *7–8.

148. *See id.* at *7.

149. *See L & R OCR, supra* note 14. The OCF enforces all three regulations—the Rehab Act, the ADA, and Title IX. *See L & R OCR, supra* note 14. The OCR enforces nondiscrimination regulations as they apply to programs receiving federal financial assistance. *See id.* The OCR is also responsible for taking the actions necessary to remedy any violations of civil rights by the affected programs. *See id.*

150. *See L & R OCR, supra* note 14.

151. 34 C.F.R. § 106.1 (2019).

152. *See generally Impact of the Civil Rights Laws*, U.S. DEP’T EDUCATION, <https://bit.ly/2ky0nF1> (last updated Sept. 25, 2018).

153. *See* Intercollegiate Athletics, 44 Fed. Reg. 71,418 (Dec. 11, 1979).

154. Lily Rothman, *How Title IX First Changed the World of Women’s Sports*, TIME (June 23, 2017), <https://bit.ly/2tCyt2>.

155. *See id.*

156. *See id.*

157. *See id.*

has soared from fewer than 30,000 between 1971 and 1972 to over 190,000 between 2010 and 2011.¹⁵⁸

Additionally, Title IX led to increased athletic scholarships for women.¹⁵⁹ Before Title IX was enacted, women were only afforded an average of 2% of schools' athletic budgets.¹⁶⁰ Of that 2%, none of the money went to scholarships for female athletes.¹⁶¹ As of 2010, female athletes receive roughly 48% of athletic scholarship dollars at the Division I level,¹⁶² and in 2012, women's teams received 40% of all athletic expenses.¹⁶³ Further, women have been afforded more opportunities to compete at elite levels through competitive events (both professional and collegiate) like the Olympics and national championships.¹⁶⁴ In addition to athletic advancements, Title IX has also improved educational prospects for women.¹⁶⁵

Since Title IX's enactment, women have earned academic degrees at unprecedented rates.¹⁶⁶ Prior to Title IX, women earned just 7% of all law degrees and 9% of all medical degrees in the United States.¹⁶⁷ Contrastingly, in recent years, women account for 47% of the students that earn law degrees and 48% of the students that earn medical degrees.¹⁶⁸ Title IX was enacted to mitigate the mistreatment of an underrepresented population, women.¹⁶⁹ To achieve an effect similar to the resounding impact Title IX has had on women in higher education, the Rehab Act and ADA should be similarly enforced.¹⁷⁰ Such enforcement would provide student-athletes with disabilities an opportunity to enjoy the same treatment, respect, and ability to thrive.¹⁷¹

158. *Title IX: 5 Ways it Changed Education for the Better*, *supra* note 15.

159. *Bridging the Gender Gap: The Positive Effects of Title IX*, ATHNET, <https://bit.ly/2F5uR9i>(last visited Dec. 29, 2019).

160. *See id.*

161. *Title IX: 5 Ways it Changed Education for the Better*, *supra* note 15.

162. *See id.*

163. Jaeah Lee & Maya Dusenbery, *The State of Women's Athletics, 40 Years After Title IX*, MOTHER JONES (June 22, 2012), <https://bit.ly/37dHxqA>.

164. *Athletics Under Title IX*, TITLEIX.INFO, <https://bit.ly/1RrLnCZ> (last visited Oct. 26, 2018).

165. *Title IX: 5 Ways it Changed Education for the Better*, *supra* note 15.

166. *See id.*

167. *See id.* (disclosing the statistics of 1972, the year Title IX was effectuated).

168. *See id.* (comparing the 1972 statistics to those taken in October of 2018).

169. *Title IX and Its Benefits*, GA. TECH PUB. POL'Y COWEB, <https://b.gatech.edu/2pcOPu6> (last updated Apr. 19, 2005).

170. *See infra* Section III.D.3.

171. *See infra* Section III.D.3.

F. *Current Status of Adapted Sports Programs*

Adapted sports programs have been slowly advancing at all academic levels.¹⁷² The growing number of athletes currently participating in adapted sports at the primary and secondary school levels is one of the driving forces for the need to expand adapted sports at the collegiate level.¹⁷³ Primary and secondary school athletes have played adapted sports for the majority of their lives and should be accorded the opportunity to continue playing at the postsecondary level.

1. *Primary and Secondary School Level*

According to a study funded by the NCAA in 2017, there were 732 youth adapted sports programs in the United States¹⁷⁴ including the American Association of Adapted Sports Programs (AAASP), which alone provides opportunities for roughly 11% of young adaptive athletes.¹⁷⁵ These adapted sports programs accommodate over 62,000 athletes, ages 18 and under, and are crucial to establishing sustainable adapted sports programs.¹⁷⁶ Of those 62,000 participants, roughly 32,000 are less than 15 years old, while the remaining 30,000 are between the ages of 15 and 18.¹⁷⁷ The 21 adapted athletics programs currently available at the collegiate level¹⁷⁸ will be unable to sustain this volume of interest and participation should these young athletes wish to further their athletic careers.

172. See generally Cody Porter, *Inclusion Programs Continue to Expand Participation Opportunities*, NFHS.ORG (Mar. 10, 2016), <https://bit.ly/329Ot5Z> (examining the rapid expansion of adapted sports).

173. See generally Işil Tanyeri, *Why Should We Invest in Collegiate Adaptive Sports Programs Now?*, ABC MED. (Apr. 23, 2017, 10:57 PM), <https://bit.ly/33qrhR8> (showcasing an insightful angle that demonstrates the need for additional adapted sports programs).

174. See *id.*

175. See *id.*

176. See *id.*

177. See *id.*

178. See *21 Colleges*, *supra* note 3; see also Charlotte Gerber, *Colleges That Offer Adaptive Sports Programs*, VERYWELLHEALTH, <https://bit.ly/2MwaiX3> (last updated Jan. 26, 2018). Wheelchair basketball, one of the most popular adapted sports, is only available at thirteen universities across the country. See *id.* Over the past decade, the wheelchair basketball teams at Kennesaw State University, Ohio State University, and University of West Georgia ceased playing. Compare Tanyeri, *supra* note 172, and Gerber, *supra* note 177, with Lakowski, *Critical Assessment*, *supra* note 14, at 288. However, they were replaced by Arizona State University, University of Nebraska Omaha, Auburn University, Oklahoma State University, and Penn State University. Compare Tanyeri, *supra* note 172, and Gerber, *supra* note 177, with Lakowski *Critical Assessment*, *supra* note 14, at 288. Each of these sources provided fragments of information on the adapted sports programs available. The author compiled the information from these sources in order to obtain an accurate number of programs currently available for adaptive athletes.

The AAASP is one of the leaders in adapted sports at the primary and secondary school levels.¹⁷⁹ The AAASP is associated with nearly 200 school districts and comprised of over 5,600 athletes per year.¹⁸⁰ The AAASP has raised over \$1.2 million for grants and equipment.¹⁸¹ Its actions have proven that expansion is possible, and schools will not need to fund the advancement of adapted sports on their own.¹⁸² Although the AAASP cannot provide all of the necessary funding to advance adapted sports on its own, it does provide a strong model for techniques that can continue to improve access and support for adapted sports.

Albeit the number of adaptive athletes currently participating in adapted sports programs is significant, the number of participants is likely hindered by the lack of opportunities for these athletes after high school. Consider the opportunity and participation growth that occurred with the passing of Title IX. Prior to Title IX, the participation rate of women in sports was significantly lower than that of men because sports were historically geared towards men.¹⁸³ After Title IX was enacted and strictly enforced, there was a significant increase in female athlete participation.¹⁸⁴ Mirroring Title IX's success, a similar effect will likely occur with adaptive athletes once they are given a greater opportunity to compete at the postsecondary level.

2. Postsecondary Schools

Although there has been a considerable increase in adapted sports opportunities at the primary and secondary school levels, the postsecondary school level has not been as fortunate.¹⁸⁵ Most universities provide only marginal support for adapted sports.¹⁸⁶ Eleven years ago, four years prior to the OCR's Dear Colleague Letter, 11 universities offered wheelchair basketball programs.¹⁸⁷ Currently, there are 13 universities that

179. *Homepage*, AM. ASS'N ADAPTED SPORTS PROGRAMS, <http://adaptedsports.org/> (last visited Dec. 29, 2019) [hereinafter *AAASP Home*]. The AAASP offers numerous sports including wheelchair handball, wheelchair basketball, wheelchair football, and wheelchair track & field. See *School Programs: Student Athletes in Action*, AM. ASS'N ADAPTED SPORTS PROGRAMS, <https://bit.ly/2MrIpQM> (last visited Dec. 29, 2019).

180. *AAASP Home*, *supra* note 178.

181. *Id.*

182. *Id.*

183. See *Intercollegiate Athletics*, 44 Fed. Reg. 71,418 (Dec. 11, 1979).

184. *Title IX: 5 Ways it Changed Education for the Better*, *supra* note 15.

185. Dave Royse, *The Dawn of a New Era for College Athletes with Disabilities*, HERO SPORTS (July 1, 2016, 3:17 AM), <https://bit.ly/33rnlQu>.

186. See *id.*

187. *Lakowski Critical Assessment*, *supra* note 14, at 288. These Universities were: Edinboro University of Pennsylvania, Kennesaw State University, Ohio State University, Southwest Minnesota State University, University of Alabama, University of Arizona, University of Illinois, University of Missouri, University of Texas at Arlington, University of West Georgia, and University of Wisconsin at Whitewater. *Lakowski Critical Assessment*, *supra* note 14, at 288.

offer wheelchair basketball in some capacity.¹⁸⁸ The minimal expansion of wheelchair basketball and other adapted sports at the collegiate level is concerning. Magnifying the concern is the seven-year period after the release of the Dear Colleague Letter¹⁸⁹ in which the OCR informed postsecondary schools of their recommendations and gave them time to act. The prolonged absence of opportunities for adaptive athletes to compete at the postsecondary level indicates that most universities are unwilling to expand their adapted sports programs unless required to by federal law.¹⁹⁰

Meanwhile, the Eastern College Athletic Conference (ECAC) has taken encouraging steps to improve adapted athletic opportunities at the collegiate level.¹⁹¹ In 2016, the ECAC announced the commencement of its Inclusive Sport Initiative.¹⁹² The ECAC launched this initiative by incorporating adaptive athletes into their 2016 ECAC Swimming and Diving Championships.¹⁹³ Also, the ECAC went on to include adaptive athletes in the 2016 Track and Field Championships.¹⁹⁴ Further, the ECAC partnered with the NCAA and U.S. Paralympics in May 2017 to host the inaugural Collegiate Para Track & Field Championships.¹⁹⁵

In addition to swimming and track and field, the ECAC board adopted a plan to incorporate adaptive athletes in other able-bodied sporting events including rowing and tennis competitions.¹⁹⁶ Not limiting itself to individual sports, the ECAC hopes to create adapted sporting events for wheelchair basketball, sled hockey, goal ball,¹⁹⁷ and sitting volleyball.¹⁹⁸ By 2020, the ECAC aims to have 1,000 adaptive athletes

188. See Tanyeri, *supra* note 172; see also Gerber, *supra* note 177.

189. See *Dear Colleague Letter*, *supra* note 74 (noting the January 2013 release of the “Dear Colleague Letter”).

190. *Lakowski Critical Assessment*, *supra* note 14, at 312.

191. The Eastern College Athletic Conference (ECAC) is associated with the NCAA and is the nation’s largest conference. See *DI Members*, ECAC SPORTS, <https://bit.ly/2M5XeII> (last visited Dec. 19, 2019). The ECAC is composed of over 300 universities ranging geographically from Maine to Georgia. See *id.* Members of the ECAC include well renowned schools such as: Penn State University, Rutgers University, University of Wisconsin, Harvard University, and Princeton University. See *id.*

192. See *ECAC Announces Forward Movement for Inclusive Sport Initiative*, ECAC SPORTS (Feb. 23, 2016, 12:00 AM), <https://bit.ly/31abEfc>.

193. See *id.*

194. See *id.*

195. See *ECAC to Host Collegiate Para Track & Field Championships at Princeton*, ECAC SPORTS (May 8, 2017, 5:42 PM), <https://bit.ly/2MrIBQ0>.

196. See Royse, *supra* note 184.

197. Goal ball is a sport created specifically for athletes who are blind. See *Goalball*, U.S. PARALYMPICS, <https://uspara.us/2pcpEIH> (last visited Dec. 20, 2019). Goalball is like soccer or European handball but uses a ball that makes noise while it is in motion, which allow the athletes to locate the ball on the court. See *id.*

198. See Royse, *supra* note 184.

competing in ECAC sports.¹⁹⁹ This goal should encourage other collegiate conferences to increase their adapted sports participation.

Understandably, funding is a major concern at the postsecondary level, given the costs associated with program expansion.²⁰⁰ Nonetheless, the story of Jim Click at the University of Arizona demonstrates that funding will not fall solely on the shoulders of the universities.²⁰¹ Jim Click recognized the need for growth in adapted sports after one of his employees became paralyzed after a touch-football accident.²⁰² Click responded emphatically by participating in numerous adapted sporting events in order to support their programs.²⁰³ He then donated \$750,000 to the University of Arizona to assure the success of its adapted sports program.²⁰⁴ Today, the annual “Jim Click’s Run ‘N’ Roll” event provides the funds necessary to maintain the six competitive adapted sports teams available at the University of Arizona.²⁰⁵ Similarly, the Craig H. Neilsen foundation allows the University of Arizona to offer scholarships to its adaptive athletes who meet the necessary academic requirements.²⁰⁶

Although program funding and scholarships are significant, an athlete’s ability to participate meaningfully in a sport is most important.²⁰⁷ The current lack of opportunities is forcing many adaptive athletes to travel far away from home just for the opportunity to play.²⁰⁸ The expansion of adapted sports at the postsecondary level throughout the United States would provide athletes with the choice to pursue opportunities across the country or stay near their friends and family at home.²⁰⁹ The same choices available to able-bodied athletes and should be available to adaptive athletes as well.

G. *How Adapted Sports Work*

A number of adapted sports are played throughout the United States.²¹⁰ Existing adapted sports feature both individual and team

199. *See id.*

200. *See id.*

201. *Jim Click’s Legacy*, U. ARIZ. DISABILITY RESOURCE CTR., <https://bit.ly/2IHotr6> (last visited Dec. 29, 2019). Jim Click is the owner of a large automotive group and a well-known community leader in Southern Arizona. Linda Drake, *Jim Click: The Leader and the Legend*, INSIDE TUCSON BUSINESS (Mar. 15, 2017), <https://bit.ly/2Q9cruS>.

202. *See Jim Click’s Legacy*, *supra* note 200.

203. *See id.*

204. *See id.*

205. *See id.*

206. *See Eligibility and Scholarships*, U. ARIZ. DISABILITY RESOURCE CTR., <https://bit.ly/33oA3iS> (last visited Dec. 29, 2019). 26 of the 50–70 adaptive athletes at the University of Arizona received scholarship awards in 2016. *See Longdon*, *supra* note 38.

207. *See Royse*, *supra* note 184.

208. *See Tanyeri*, *supra* note 172.

209. *See id.*

210. *See Jeannette Elliott & Maria Thomassie, Adaptive Sports: Staying Active While Living with A Disability*, CHOOSEPT, <https://bit.ly/2Wb9Ctr> (last visited Dec. 24, 2019).

sports.²¹¹ The individual sports offered include golf, cycling, snow skiing, and swimming;²¹² whereas team sports include wheelchair basketball, sitting volleyball, quad rugby, wheelchair tennis and more.²¹³

Adapted sports are deliberately designed to incorporate people of all levels of physical ability.²¹⁴ With the exception of quad rugby, a sport designed specifically for tetraplegic athletes, most adapted sports are reformed to meet the needs of athletes with varying forms of disabilities.²¹⁵ For individual sports, athletes are placed in classes based on their “functioning ability.”²¹⁶ Each athlete’s functioning ability is evaluated by “classification panels” made up of two to three classifiers.²¹⁷ These classifiers are periodically assigned throughout the athlete’s competitive career.²¹⁸ Classes were implemented to ensure that “the best athlete wins, not the athlete with the most physical function.”²¹⁹

Meanwhile, team-sport athletes are assigned a point value based upon their functioning ability.²²⁰ The more physical function the athlete has, the higher the point value assigned to the athlete.²²¹ Each team is set up to include “several athletes whose total points cannot exceed a certain threshold.”²²² The point total limitation ensures that the games include athletes of all functioning abilities.²²³ For example, in wheelchair basketball, each player is certified based upon their functionality on a scale of 1.0 to 4.5, by increments of 0.5.²²⁴ Wheelchair basketball also includes a point threshold limiting each team to five players whose functionalities add up to no more than 14 points at a given time.²²⁵ Currently, the Paralympics require that athletes permanently experience the impairments that make them eligible to participate in each adapted sport,²²⁶ however,

211. *See id.*

212. *See id.* (highlighting some, but not all, of the individual adapted sports available for adaptive athletes).

213. *See id.*

214. *See* MODEL SYS. KNOWLEDGE TRANSLATION CTR., ADAPTIVE SPORTS AND RECREATION 3 (2016), <https://bit.ly/3170RIZ>.

215. *See id.* at 4.

216. *Id.*

217. *Id.*

218. *Classification Explained*, INT’L PARALYMPIC COMMITTEE, <https://bit.ly/1SURPNP> (last visited Dec. 24, 2019).

219. MODEL SYS. KNOWLEDGE TRANSLATION CTR., *supra* note 214, at 4.

220. *See id.*

221. MODEL SYS. KNOWLEDGE TRANSLATION CTR., *supra* note 214, at 4.

222. *Id.*

223. *See id.*

224. *Classification in Wheelchair Basketball*, IWBF.ORG, <https://bit.ly/2BfDJYh> (last visited Dec. 24, 2019).

225. *Id.*

226. *See Classification Explained*, *supra* note 217. These eligible impairments include: (1) impaired muscle power; (2) impaired passive range of motion; (3) limb deficiency; (4) leg length difference; (5) short stature (due to abnormal dimensions); (6)

universities should be more lenient on this requirement to foster growth and inclusion.²²⁷

Participating in sports allows athletes to experience numerous physical, social, and psychological benefits.²²⁸ The opportunities available for adaptive athletes at the postsecondary level are not nearly sufficient to sustain the tens of thousands of young adaptive athletes who may wish to further their athletic careers.²²⁹ Although the Rehab Act and ADA offer protection for adaptive athletes, they are not currently enforced strictly enough to foster change at the postsecondary level.²³⁰

Implementing stricter enforcement guidelines for the Rehab Act and ADA, similar to the enforcement of Title IX for women, would advance the protection of athletes with disabilities at the postsecondary level.²³¹ Additionally, integrating able-bodied athletes into adapted sports would foster the growth of adapted sports and help negate the fear of segregation between adaptive athletes and able-bodied athletes.²³²

III. ANALYSIS

Adaptive athletes deserve the opportunity for meaningful participation at the collegiate level. Although the federal government does not currently mandate schools to provide programs for athletes with disabilities, it recognizes the importance of athletic programs.²³³ School athletic programs are tax-exempt because the government believes such programs are a vital part of a student's educational, social, and emotional development.²³⁴ While requiring schools to implement teams for adaptive athletes would be a costly undertaking, the ability of adapted sports to generate fundraising revenue²³⁵ may keep these programs from being considered an undue burden under the ADA.²³⁶ Reasons may exist to keep the status quo in athletics, but far greater reasons exist to continue to make social progress.

hypertonia; (7) ataxia; (8) athetosis; (9) visual impairment; or (10) intellectual impairment. See *Classification Explained*, *supra* note 217.

227. See *infra* Section III.B.

228. See *supra* Section II.B.

229. See *supra* Section II.F.2.

230. See Tanyeri, *supra* note 172 and accompanying text.

231. See Tanyeri, *supra* note 172 and accompanying text.

232. See *infra* Section III.D.

233. See *Lakowski Critical Assessment*, *supra* note 14, at 309.

234. See *id.*

235. See *supra* Sections II.F.1–2.

236. See *supra* Section II.D.2.

A. *Promote Health, Happiness, and Participation*

The benefits associated with living an active lifestyle are well-documented.²³⁷ Providing athletes with disabilities a consistent avenue to continue their athletic careers is a necessary step to ensure that they can live life to the fullest. Former Temple University wheelchair basketball players indicated that their time playing sports in college “transformed their lives.”²³⁸ Adaptive athletes should have ample opportunities to experience the same feelings that the Temple athletes did, just as many able-bodied men and women at the collegiate level do today.

Additionally, participation in athletics is positively correlated with employment levels in athletes with disabilities.²³⁹ A survey conducted in 2009 found that Disabled Sports USA (DSUSA) participants were twice as likely to be employed as the general population with disabilities.²⁴⁰ Moreover, participants were more than twice as likely to be physically active as the general population of disabilities.²⁴¹

B. *Failure to Include Athletes with Disabilities on Already Established Team Sports*

The requirement that schools provide reasonable accommodations for students with disabilities to participate in athletics is one of the most significant features of the ADA and Rehab Act.²⁴² Although students do not have the explicit right to participate in these events, they must be accorded an opportunity to participate based upon the same criteria coaches use to evaluate every able-bodied player.²⁴³ Put simply, an athlete with disabilities must be given the opportunity to try out and be assessed just as any able-bodied athlete would, but they are not guaranteed a position on any team. Therefore, the ADA and Rehab Act protect against the discrimination of adaptive athletes based solely on their disabilities. Though the requirement for reasonable accommodations provides many athletes protection from blatant discrimination, postsecondary schools have been able to interpret the regulation without including athletes with disabilities on their sports teams.²⁴⁴

237. *See supra* Section II.B.

238. Tanyeri, *supra* note 172.

239. *See id.*

240. *See id.* Disabled Sports USA is a nonprofit organization that provides sporting opportunities to youth and adults with disabilities. *See Our Mission*, DISABLED SPORTS USA, <https://bit.ly/35qacc6> (last visited Dec. 23, 2019). The organization does this to improve the lives of its members and encourage striving to reach their potential. *Id.*

241. *See id.* 76 of DSUSA members were physically active, compared to the just 30% of the non-DSUSA population of people with disabilities who are physically active. Tanyeri, *supra* note 172.

242. *See supra* Sections II.C–D.

243. *Dear Colleague Letter*, *supra* note 74, at 6.

244. *See supra* Section II.D.2.

For example, schools can avoid making accommodations if the accommodations proposed would alter the fundamental nature of the activity or provide safety concerns for any athletes participating in the activity.²⁴⁵ As discussed above,²⁴⁶ a fundamental rule can be something as simple as allowing the ball to bounce only once in racquetball before the opposing player returns the shot.²⁴⁷ Sports are naturally formulated to have rules strictly enforced in order to avoid the possibility of cheating and maintain a consistent and competitive environment.²⁴⁸ Therefore, many adaptive athletes, especially those with spinal cord injuries, have difficulty abiding by the rules without requiring some fundamental alterations.²⁴⁹

The difficulty of avoiding fundamental alterations should not imply non-fundamental alterations cannot be made,²⁵⁰ but instead suggests that the number of athletes protected by this segment of the ADA is limited.²⁵¹ Even when alterations can be made, they are often met with hostility from opposing competitors who claim that adaptations give adaptive athletes an unfair advantage.²⁵² When alterations cannot be made to create a level playing field, organizations must turn to other segments of the ADA and Rehab Act designed to protect athletes with disabilities. The integration of able-bodied and adaptive athletes is one such way to protect all athletes.²⁵³

C. *Insufficient Number of Programs*

If postsecondary institutions continue to underrepresent adaptive athletes, students will suffer. Because very few universities have adapted sports programs, adaptive athletes with aspirations to play college sports are limited in university options.²⁵⁴ Many students are forced to relocate

245. *See supra* Section II.D.2.

246. *See supra* Section II.D.2.

247. *Kuketz v. Petronelli*, 821 N.E.2d 473, 478 (Mass. 2005).

248. *See* Jjhasin, *The Importance of Rules in Sports*, THE LAUREL BLOG (Nov. 16, 2014), <https://bit.ly/2VxChJU>.

249. *See* COACHING ASS'N OF CAN., COACHING ATHLETES WITH A DISABILITY 11 (2016), <https://bit.ly/2nCsKES> (emphasizing that the neurological nature of spinal cord injuries may have a more severe effect on motor function than that experienced by amputees).

250. *See generally* Anthony Robles as told to Kayci Woodley, *Former ASU Wrestler Anthony Robles Reflects on His Career*, NCAA (Jan. 22, 2018), <https://bit.ly/2OEyqYI>. Anthony Robles was born with one leg. *See id.* In 2011, he became an NCAA champion wrestler as a member of the Arizona State University varsity wrestling team. *See id.*

251. *See* Florian Kiuppis, *Inclusion in Sport: Disability and Participation*, 21 SPORT SOCIETY 4, 5 (2018), <https://bit.ly/39r24da> (discussing the barriers that athletes with disabilities face when attempting to participate in traditional sports).

252. *See generally* Rose Eveleth, *Does Double-Amputee Oscar Pistorius Have an Unfair Advantage at the 2012 Olympic Games?*, SMITHSONIAN MAG. (July 22, 2012), <https://bit.ly/2B62fL2> (discussing whether Oscar Pistorius gained a competitive advantage from his prosthetics, which absorbed contact with the ground and allowed him to move differently than able-bodied runners).

253. *See supra* Section III.D.

254. Tanyeri, *supra* note 172.

away from their families and spend more money because there are no collegiate adapted sports programs near their homes.²⁵⁵ This is not an issue for able-bodied athletes, who have the option of multiple schools in every state to continue their athletic careers.²⁵⁶

Importantly, states have done an excellent job of increasing athletic opportunities for younger athletes with disabilities.²⁵⁷ Nevertheless, the 30,000 adaptive athletes between the ages of 15 and 18 will be fighting for extremely limited spots if they choose to pursue a collegiate athletic career.²⁵⁸ Yet, there is still time to expand the opportunities for the 32,000 athletes under the age of 15 before they enter the field of collegiate athletics.²⁵⁹ Creating a robust environment for adaptive athletes to continue playing sports is imperative for the continued success of adapted sports after high school.²⁶⁰

D. *Making a Push for Integrated Sports*

The third requirement of Section 504 is essential for extending opportunities to athletes with disabilities at the collegiate level.²⁶¹ Specifically, this requirement mandates that unnecessarily separate services for students with disabilities are prohibited unless the services are required for the students to receive benefits similar to those provided to others.²⁶²

When the ADA's reasonable accommodations requirement does not protect certain students, institutions should provide students with an alternative to the traditional team sports offered at most universities. Such alternatives would allow students to enjoy the benefits associated with being members of a team and participating in athletic competitions. Traditional team sports include football, basketball, baseball, and

255. *Id.*

256. See Justin Berkman, *The Complete List of NCAA Division 1 Colleges (Most Recent)*, PREP SCHOLAR BLOG (Sept. 1, 2019, 9:00 PM), <https://bit.ly/2paQXTa>; see also Justin Berkman, *The Complete List of NCAA Division 2 Colleges*, PREP SCHOLAR BLOG (Sept. 1, 2019, 8:00 PM), <https://bit.ly/2pg48Cw>; Justin Berkman, *The Complete List of NCAA Division 3 Colleges*, PREP SCHOLAR BLOG (Sept. 1, 2019, 8:00 PM), <https://bit.ly/2EonThl>. The author acknowledges that the highly competitive nature of collegiate athletics and the financial burden that may accompany participation limits the options of many able-bodied athletes to attend the institutions they desire as well. This segment is meant to highlight the availability of programs rather than the feasibility of a particular athlete participating in a given program.

257. See *supra* Section II.F.

258. See Tanyeri, *supra* note 172.

259. See *id.*

260. See generally *Cohen v. Brown Univ.*, 101 F.3d 155, 188 (1st Cir. 1996) (discussing the profound impact Title IX had on the success of female athletes and their increased opportunities for participation).

261. See *Dear Colleague Letter*, *supra* note 74, at 11.

262. See *Dear Colleague Letter*, *supra* note 74 and accompanying text.

volleyball.²⁶³ The Dear Colleague Letter stresses that students with disabilities should have an equal opportunity to have their “interests” met.²⁶⁴ When these interests are not fulfilled by a school’s existing extracurricular programs, the school “should create additional opportunities for those students with disabilities.”²⁶⁵

Incorporating integrated sports is a viable solution to increase access for athletes with disabilities at the collegiate level.²⁶⁶ This option has recently gained some traction with the National Wheelchair Basketball Association.²⁶⁷ Although integrated sports place able-bodied and adaptive athletes on the same playing field, the ADA’s concern of compromising the safety of athletes is misguided.²⁶⁸ Such a strategy would be similar to unified sports, where athletes with intellectual disabilities are placed on a team with athletes without intellectual disabilities.²⁶⁹

As discussed above, adaptive athletes participating in team sports are certified based on their functional abilities.²⁷⁰ This certification system will naturally create a balance of athletes with and without disabilities on each team.²⁷¹ The rationale behind this method would be two-fold: (1) to provide a greater pool of athletes to participate in adapted team sports; and (2) to mitigate the concern about segregation between athletes with disabilities and able-bodied athletes.²⁷²

263. See *List of Sports*, ENCYCLOPEDIA BRITANNICA (last updated 2019), <https://bit.ly/33mCSAP>.

264. *Dear Colleague Letter*, *supra* note 74, at 11.

265. *Id.*

266. ATHLETICS FOR ALL, WHEELCHAIR BASKETBALL GUIDELINES 4 (2015), <https://bit.ly/32azitA>. The integrated competition model offers students with and without disabilities an opportunity to participate together in the world’s most popular Paralympic sport. *Id.* at 12.

267. Drew Allen, *Helping Student-Athletes Celebrate Unforgettable Moments*, FRACTURE BLOG (June 19, 2018), <https://bit.ly/2OAtoxT>.

268. See *supra* Section II.D.2.

269. See *Special Olympics Unified Sports Quick Reference Guide*, SPECICALOLYMPICS.ORG (Sept. 20, 2012), <https://bit.ly/33rPruz>. The author recognizes that there are differences between unified and integrated sports. Although unified sports call for an equal number of athletes with and without a disability, this author views that restriction as unnecessary for the success of integrated sports. See generally Allen, *supra* note 266 (“Once they’re sitting in a chair, they’re absolutely equal.”).

270. See *supra* Section II.G.

271. See *supra* Section II.G. Because the point threshold in this certification system ranges from 1.0 to 4.5 based on functioning ability, the classification panels will almost always certify able-bodied athletes at the maximum 4.5 rating. The current structure of the point threshold would require each integrated team to have at least 3 adaptive athletes on the court at any given time in order to remain under the 14-point limit.

272. See Allen, *supra* note 266.

1. More Athlete Participation

Promoting integrated sports at the collegiate level would allow the pool of potential athletes to grow.²⁷³ Further, incorporating able-bodied athletes would allow schools to start adapted sports programs sooner. Taking these steps would allow postsecondary programs to be prepared for the wave of adaptive athletes that are bound to emerge from the recent movement at the primary and secondary school levels.²⁷⁴ With demand increasing for adapted sports, the paucity of programs at the college level could be discouraging, even detrimental, to the movement as a whole.²⁷⁵ Although the expansion of opportunities at the collegiate level is important, the effect integrated sports would have on the desegregation of athletes would be equally powerful.

2. Overcoming Segregation

“[I]n the field of public education the doctrine of ‘separate but equal’ has no place.”²⁷⁶

Both the Rehab Act and the ADA suggest that forming adapted sports teams may segregate athletes with disabilities from able-bodied athletes.²⁷⁷ Conversely, incorporating integrated sports would help overcome the fear of segregation that is addressed by the Rehab Act and ADA.²⁷⁸ Providing sports that place able-bodied athletes and adaptive athletes on an even playing field would limit the adaptations necessary to accommodate individual athletes in these sports.²⁷⁹ This movement would protect adapted sports from claims of discrimination under the Rehab Act because the population of students would not be separated.

An additional benefit of integrated sports would be the change in perception of adapted sports, as viewed by the entire population, into the realm of mainstream sports. The transition would hopefully reduce the stigma in the minds of the general public that separates adapted sports from traditional sports.²⁸⁰ The end goal of adopting integrated sports

273. *See id.*

274. *See supra* Section II.F.1.

275. *See Tanyeri, supra* note 172.

276. *Brown v. Bd. of Educ.*, 347 U.S. 483, 495 (1954).

277. *See* 34 C.F.R. § 104.4 (2019); *see also* 42 U.S.C. § 12101(a)(2) (2018).

278. *See Allen, supra* note 266.

279. *See id.*

280. *See generally* Sheryl L. Chatfield & Michael Cottingham II, *Perceptions of Athletes in Disabled and Non-Disabled Sports Contexts: A Descriptive Qualitative Research Study*, 22 QUALITATIVE REP. 1909, 1915 (2017) (showing that the able-bodied population observed felt as though adaptive athletes provided more inspiration for and were more relative to the disabled population).

programs would be for adapted team sports to be perceived as everyday sports, just as baseball, basketball, and football are perceived today.

3. Emulating Title IX

Title IX has had a profound impact on women's rights and access at the postsecondary level, both academically and athletically.²⁸¹ The OCR should regulate Title IX and the Rehab Act in a similar fashion as they are both designed to protect underrepresented classes. While the 2013 Dear Colleague Letter implied the two regulations would be treated in a similar manner,²⁸² an OCR official, speaking on behalf of the organization, spoke to the contrary after the letter was published.²⁸³

When asked to clarify, the official stated that schools were "encouraged but not required" to create additional opportunities for students with disabilities.²⁸⁴ This contradicts the Dear Colleague Letter's statement that the needs of students with disabilities must be met "fully and effectively," just as they are required by Title IX.²⁸⁵ This statement essentially relegates the Rehab Act to the status it was prior to the 2013 Dear Colleague Letter.²⁸⁶

Title IX outlines equal opportunity and requires comparable resources for men's and women's athletics based upon 11 criteria, including redesigning locker rooms, practices, and competitive facilities.²⁸⁷ Although these resources would certainly be ideal for adapted sports programs, providing students with disabilities an avenue to continue their athletic careers at the postsecondary level is a critical first step. Requiring postsecondary institutions to redesign their recreation facilities with these resources in mind may lead to increased resistance.²⁸⁸

281. *See supra* Section II.E.

282. *Compare Dear Colleague Letter, supra* note 74, at 11 (stating that the interests of students with disabilities should be met fully and effectively), *with* Intercollegiate Athletics, 44 Fed. Reg. 71,418 (Dec. 11, 1979)(emphasizing the idea that the interests of female students should be met fully and effectively).

283. BORKOWSKI ET AL., *supra* note 104.

284. *Id.*

285. *See supra* Section II.C.2.

286. BORKOWSKI ET AL., *supra* note 104.

287. *Lakowski Critical Assessment, supra* note 14, at 314. These eleven criteria include: (1) locker room, practice and competitive facilities; (2) equipment and supplies; (3) the scheduling of games and practice times; (4) publicity; (5) coaching; (6) travel and daily allowance; (7) academic tutoring; (8) medical and training facilities and services; (9) housing and dining facilities and services; (10) recruitment of student athletes; and (11) support services. *Lakowski Critical Assessment, supra* note 14, at 314.

288. *See* Dennis L. Poepsel & David A. Schroeder, *Helping and Prosocial Behavior*, in NOBA TEXTBOOK SERIES: PSYCHOLOGY (R. Biswas-Diener & E. Diener eds., 2019), available at <http://noba.to/tbuw7afg>. People engage in a cost-benefit analysis when contemplating prosocial behavior. *Id.* Psychology defines prosocial behavior as when a person acts with the intention to benefit other people. *See id.* When costs are high, people are less likely to engage in prosocial behavior. *See id.* The University of Alabama's new

The OCR should explicitly require that postsecondary institutions meet the needs of students with disabilities fully and effectively. The needs, in this case, are the numerous benefits students stand to gain from participating in athletics, which many athletes with disabilities cannot currently enjoy.²⁸⁹ This would require universities to develop adapted or integrated sports programs to fulfill the needs of the influx of students who have participated in adapted sports throughout their scholastic careers. Once postsecondary institutions establish athletic programs across the country with satisfactory equipment, coaching, and funding, the OCR can focus more intently on universally equal treatment between male, female, and adaptive athletes.

IV. RECOMMENDATION

The OCR should release a statement or amend the Rehab Act to mandate postsecondary institutions to meet the needs of adaptive athletes fully and effectively. The OCR should provide guidelines to establish either an adapted or integrated sports program²⁹⁰ at every NCAA Division I college. Additionally, the OCR should require all smaller institutions that receive requests from their students with disabilities to either: (1) develop an adapted sports program; or (2) cultivate a partnership with a nearby university with an established program. Should the need for adapted sports expand following this policy, the OCR can expand its guidance to include smaller institutions.

To ensure that the adapted sports movement continues to expand, the OCR should require all secondary school teachers to receive some sort of adapted sports training before being certified to teach physical education at the high school level.²⁹¹ Then, once programs are developed at the postsecondary level, high schools should be required to conduct semi-annual trips to visit these facilities and teams. This would ensure that students receiving a secondary education have some direct exposure to adapted sports.

state of the art adapted athletics facility, which opened in 2018, cost the school and donors a total of \$10 million. See Jason Scott, *Alabama Opens \$10M Adapted Athletic Arena*, ATHLETIC BUS. (Jan. 2018), <https://bit.ly/31aVDpf>. Thus, logic indicates that redesigning athletic facilities for adapted athletics would also be a significant expense.

289. See *supra* Section II.B.

290. The choice to adopt either an adapted or integrated sports program should be at the discretion of each school. However, the interscholastic competition should treat adapted and integrated teams as equal since there is no perceived advantage to able-bodied athletes participating in adapted sports.

291. Similar to the coach's clinics offered by the AAASP. See *Services*, AM. ASS'N ADAPTED SPORTS PROGRAMS, <https://bit.ly/2B63Oc5> (last visited Dec. 20, 2019).

V. CONCLUSION

The OCR needs to address how adaptive athletes remain underrepresented at the collegiate level. Sports provide far too many benefits to allow the lack of opportunities for adaptive athletes pursuing collegiate athletic careers to continue.²⁹² The 21 universities currently offering opportunities to adaptive athletes are too few given today's population of athletes with disabilities.²⁹³ These universities will be unable to provide sufficient opportunities for the 62,000 youth athletes currently participating in adapted sports at the primary and secondary school levels.²⁹⁴

To ensure that these students have the opportunity to continue their athletic careers, the OCR should expect postsecondary institutions to fully and effectively meet the needs of athletes with disabilities.²⁹⁵ Using these terms in an effort to emulate the effect Title IX has had on women's athletics should stimulate the growth of adapted sports in a similar fashion.²⁹⁶ Additionally, the OCR should implement regulations promoting integrated sports at postsecondary institutions across the country.²⁹⁷

Promoting integrated sports would allow athletes with disabilities and able-bodied athletes to participate in the same sports without fear of advantage or injury.²⁹⁸ Doing so would also mitigate the fear of segregation between athletes with disabilities and able-bodied athletes across collegiate athletics.²⁹⁹ With stricter enforcement of current laws and enhanced opportunities for adaptive athletes, the United States will make significant strides in its goal of providing equal opportunities to its diverse citizens.

292. *See supra* Section II.B.

293. *See supra* Section II.A.

294. *See supra* Section III.C.

295. *See supra* Section III.E.

296. *See supra* Section III.D.3.

297. *See supra* Section III.E.

298. *See supra* Section III.D.

299. *See supra* Section III.D.2.