LEGAL MAILBAG – SEPTEMBER 12, 2024

By Attorney Thomas B. Mooney, Neag School of Education, University of Connecticut

The "Legal Mailbag Question of the Week" is a regular feature of the CAS Weekly NewsBlast. We invite readers to submit short, law-related questions of practical concern to school administrators. Each week, we will select a question and publish an answer. While these answers cannot be considered formal legal advice, they may be of help to you and your colleagues. We may edit your questions, and we will not identify the authors.
Please submit your questions to: legalmailbag@casciac.org.

Dear Legal Mailbag,

I am the athletic director at a public high school, and we are looking for legal guidance on how to handle a current situation.

A student tried out for and made our cheerleading team. The student experiences high levels of anxiety, and she has an IEP with many accommodations, including accommodations related to attendance, classwork, and communication, to help decrease her levels of anxiety in a school setting. After making the team, the family shared the student's IEP/school accommodations with the coaches. The coaches happen to be teachers in another district, and therefore they are familiar with the process. However, this is the first time the issue of accommodations has ever come up for us in an athletics setting.

Are the coaches legally obligated to follow the plan/accommodations for the student? I would find that hard to believe because many of the school coaches are not teachers and do not possess the educational background to do so. Note that we plan to do the best we can to fully integrate the student and help the student in any way; however, we are concerned it may not work out perfectly. It is no secret that Cheer teams could have "girl drama," body issues, and interactions that may increase anxiety. This becomes increasingly challenging if the coaches are holding all members of the team accountable for following the team rules and the one student would get "a pass" on many violations based on the language in the IEP.

Thank you in advance for any guidance on this subject!

Signed,
Having Doubts

Dear Doubts:

Legal Mailbag recognizes that you face a challenge. The coaches are not obligated simply to apply the accommodations developed for the student in school. However, it may be necessary to make accommodations to permit the student to participate on the cheerleading team if those accommodations may be made without fundamentally changing the cheerleading program.

School officials have an affirmative duty to assure that students with disabilities can participate in extracurricular activities. To do so, school districts can be required to provide disabled students significant accommodations. In working to meet these obligations, school officials must keep a basic principle of disability law in mind: students must be considered individually. Rather than relying on rules that were developed to apply to students without disabilities, school officials must consider the individual circumstances of the student in question. Does the rule make sense as to that student? Would an exception to the rule undermine the purpose of the rule? These decisions must be based on the unique facts of the specific case. *See* Department of Education, Office for Civil Rights, "Dear Colleague" Letter dated January 25, 2013 regarding participation of children with disabilities in school athletics.

The principle of individual consideration is reflected in two separate cases. The federal district court in Connecticut ruled that an exception should be made for a young man with Down Syndrome to the CIAC rule prohibiting students nineteen years of age from competing in interscholastic activities. While the rule is reasonable in general (because it protects student competitors from older students), the court found that it worked unnecessarily in that case to discriminate against the disabled student, who was an enthusiastic, albeit not-gifted, member of the swim team. *Dennin v. CIAC*, 913 F. Supp. 663 (D. Conn. 1996), *dismissed as moot,* 94 F.3d 96 (2d Cir. 1996).

By contrast, in *Stearns v. Board of Education for Warren Township High School District No. 121*, 1999 WL 1044832 (N.D. Ill. 1999), a student was dismissed from the varsity basketball team for violating a "no-alcohol" rule. He claimed that his exclusion was discriminatory because his alcoholism (a disability) caused him to use alcohol. The court, however, rejected that claim, ruling that an accommodation that would permit him to violate the "no-alcohol" rule was not reasonable, because it would undermine the very purpose of the rule, which was intended to establish ideals of good sportsmanship and respect for rules and authority.

It can be difficult to know just how far to go in making accommodations so that students with disabilities can participate in extracurricular activities. In fairness to the other competitors and to the underlying purpose of the activity, there are limits to the duty to make accommodations. Modifications to the rules or activity need not be made if they fundamentally alter the nature of the activity. However, reasonable people can differ on what is or is not a fundamental change. For example, in *PGA Tour, Inc. v. Martin*, 532 U.S. 661 (2001), the United States Supreme Court ruled that a professional golfer with disability had the right under the ADA to use a golf cart in competition because walking between the holes was not a fundamental aspect of the competition.

Given these principles, the coaches will have to consider which accommodations the student needs to participate as a cheerleader. Once those accommodations are identified, the coaches (with your help, Legal Mailbag hopes) must decide whether some or all of those accommodations may be made without fundamentally changing the cheerleading program. The key is that the coaches must make these decisions on the specific facts presented rather than simply saying that "rules are rules."