

Mary Struckhoff, NFHS assistant director, emphasizes that federal law, such as the ADA, would take precedence over any prohibition in the rulebook regarding wheelchairs, crutches and the like. "The rules should be interpreted to allow reasonable accommodation for the disabled," says Struckhoff. "We work with (the state associations) on reasonable accommodations, and it's never proper to have the officials take the rules regarding accommodations into their own hands."

The Burlington City case was not the first involving an apparent conflict between playing rules and the ADA. Last year, Victor Barrios, a high school baseball coach in California, won a \$10,000 settlement from the California Interscholastic Federation (CIF) in a dispute over his use of a wheelchair. In the spring of 1999, Barrios was coaching at Westminster High in Anaheim. When he went to the third base coaching box in a wheelchair at a preseason scrimmage, the umpires refused to work, citing liability concerns.

In the end, the CIF issued what it called a "waiver" from the NFHS rules allowing Barrios to coach in his wheelchair, which he did for rest of 1999 and all of the 2000 season. Despite the CIF's show of support, a suit was filed against the state office anyway, charging that Barrios was the victim of discrimination under the provisions of the ADA. "I had already written a letter and told (Barrios) he could coach," said CIF legal counsel Andy Patterson. "Our position has always been very supportive of the ADA."

The umpires involved were not the targets of the lawsuit, but Rick Stone, who has umpired various levels of baseball in California for more than 30 years, was interested. He was not involved in the Barrios case directly but followed the

developments closely. "It was a ticklish situation," Stone said. "Everybody was concerned about whether their (liability) insurance was going to cover them if there was an injury. (The umpires) weren't sure if they were violating safety provisions and they couldn't get an answer from anybody about the insurance."

Princeton, N.J., attorney Mel Narol, a leading authority on officiating-related legal matters, says that independent contractor officials aren't likely to be found liable. But he warns that independent contractor status won't necessarily keep officials from being named as defendants. "Right now the ADA does not apply unless it can be proven the official is an employee," Narol said. "It's conceivable that for anti-discrimination law purposes someone who looks like an independent contractor, however, might be declared an employee."

That's a matter of particular concern to officials who work youth league and recreational contests that are not supported by state or national organizations, says Narol. College officials, who are assigned by a conference, have a support system in place to back them up. High school officials theoretically are supported by their state association and the NFHS. In practical terms, those state or national organizations are more likely to be the target of legal action than individual officials in an ADA-related case.

## 4 Things You Need to Know About the ADA

By Donald C. Collins

1. In *Anderson v. Little League Baseball, Inc.*, 794 F. Supp. 342 (D. Ariz. 1992), a federal court held the ADA gave a disabled baseball coach full access to the coaches box. Most sports governing bodies failed to adjust the rules to account for *Anderson*. Governing bodies must adjust their rules to account for the rights of the disabled just as they have done to account for potential legal problems resulting from injuries and religious concerns.
2. Officials should wonder whether they could be liable under the ADA for their onfield decisions. Courts look for whether a person has enough control over the discriminatory policy that he or she could modify it to accommodate the

disabled plaintiff. If a person has enough control, that person can be liable under the ADA. Officials generally don't have the discretion to set discriminatory policies. Officials usually don't make participation rules or have discretion over their enforcement. Thus, officials are usually not going to be liable under the ADA. However, if a rule is vague, an official — or an association that established a procedure on the vague rule — could be found to have discretion over a discriminatory policy, and, therefore, could be liable.

3. Independent contractor issues may play a role under the ADA. Courts have found that independent contractors who don't control policy

are not liable. However, independent contractors still could be liable if they had discretion over the application of the discriminatory act. Some courts have found employees liable under the ADA, but other courts try to avoid employee liability because the courts want to change organizational behavior, not punish individuals. Employees who are liable usually have some discretion over the application of a discriminatory act or policy. Also, some courts appear extremely reluctant to hold a low-level employee liable under the ADA. If sports officials are employees, the key question is whether they have discretion to interpret or apply a discriminatory

But some youth leagues aren't part of any national organization. As a result, an official may become the target of legal action with nowhere to turn for support but a community boys' club or recreation department.

The bottom line is that officials must be more careful than ever before. You must enforce all safety regulations while at the same time not discriminate — in word or action — against anyone. Lawmakers are not callous to the need to protect other people on the field and there is even an exception to the ADA if the person would create a direct threat to others. However, courts will not simply accept an organization's presumption that the presence of a disabled person creates a risk that cannot be accommodated.

So how does an official walk that line? It will help to keep these points in mind:

- Be sure you have access to proper insurance coverage. Liability insurance covers personal-injury situations, but may not cover acts of discrimination that do not involve bodily injury. Patterson suggests purchasing Directors' and Officers' (DNO) or Errors and Omissions (RNO). "Talk to a good broker," he said. "Anybody who takes the field should have insurance in place."
- If one of the coaches you are working with has a disability, treat him or her the same way you would any other coach. If you are concerned about mobility, watch the coach move around. If the coach is adjacent to a sideline or foul line you might ask him or her to be sure to leave the proper amount of space between themselves and the boundary.
- If after watching the coach move around you still have concerns about his or her safety, you might want to discuss the matter with the contest administrator. In any case, don't

rule. There are no published opinions on whether sports officials are independent contractors under the ADA, but courts will use the same tests used in other independent contractor/employee determinations. Thus, sports officials will probably be held independent contractors.

4. Officials associations can be liable under the ADA for discriminating in game assignments. Under the ADA, an officials association will probably be found to be an employment or referral agency. It doesn't matter whether officials are employees or independent contractors; employment agencies cannot discriminate against any worker. Officials must still earn their assignments — quality still counts. However, associations can't deprive disabled officials of games they are capable of doing. Associations must have objective reasons for denying the official these games, and the reasons can't be a pretext for discrimination.

*(Donald C. Collins is a longtime official and lawyer from San Francisco.)*



dramatically order a coach off the field or sidelines. That will not solve the problem. If you are overwhelmingly convinced that the coach's presence constitutes a danger to the athletes, you may consider removing him or her, but be sure you have a sound reason for your decision. Your opinion alone probably won't be good enough.

- Remember the ADA is a federal statute. You cannot disregard it just because you may not agree with it.
- Don't be authoritative. Don't make threats or demands. That is a good way to become the target of a lawsuit.
- Talk to your assignor and other members of your association. Chances are you aren't the first official who has worked with that coach. Pool information. Find out how others have handled the situation, and try to come up with a consistent approach so the coach knows what to expect from one contest to the next.
- Finally, remember that the coach wants to be on the field as badly as you do. At all times, work to accommodate him or her to do that.

It's been well over a year since Masters was told he couldn't use his crutches in the coaching box. He and Lee haven't talked since, although they were both honored at the same postseason banquet last year, Masters for his achievements as a coach, Lee for his accomplishments as an umpire.

Perhaps with more clearly defined guidelines regarding disabilities in sports — from both rulesmaking bodies and lawmakers — such problems can be avoided in the future. *(Rick Woelfel is a full-time sportswriter with Montgomery Newspapers in Fort Washington, Pa., as well as a part-time play-by-play radio announcer. He umpires various levels of amateur baseball and has worked football and basketball.)*