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2025

Adaptive College Athletics: The Champion Medals Await Those Collegiate Universities Who Compete

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I. Introduction: The Advanced Sports Radio Punditry

Collegiate institutions have significant potential benefits to gain by incorporating adaptive sports programs into their athletic offerings. The benefits of college athletics are well known and numerous and they extend to people with disabilities when given the opportunity to participate in athletics.¹ Over the last decade and a half there has been significant growth of adaptive sports programs in K-12 programs in many states.² Similar growth has not been seen at the collegiate level despite some positive steps taken in various places during this time.³ The exact number of collegiate institutions offering adaptive sports programs is hard to track since there is no specific governing body; however, as of 2022 at least 42 collegiate institutions offered some form of adaptive sports.⁴ Factors such as cost⁵ and geographical participation in competition in terms of numbers of participants in a given area⁶ are factors to consider in the slow growth of adaptive sports at the collegiate level; however, these hurdles can be overcome and doing so offers a wide range of benefits to both the disabled athletes attending college and the collegiate institutions themselves.

Several authors have written on this topic with a focus on the benefits to the disabled

¹ James M. Mitsos, Comment, *Get the Ball Rolling: The Continued Advancement of Adapted and Integrated Sports at Postsecondary Education Institutions*, 124 Penn St. L. Rev. 555, 560-563 (2020).

² *Id.*, at 572-574.

³ *Id.* at 574.

⁴ Collegiate Adaptive Sport Programs, United States Olympic & Paralympic Committee (Dec 02, 2022), <https://public.tableau.com/app/profile/calli.doggett/viz/CollegiateAdaptiveSportPrograms/CollegiateAdaptiveSportPrograms>. This database hosted by the United States Olympic & Paralympic Committee may be the most official, but its completeness remains questionable. The database describes itself as “an overview” and asks for additions of adaptive sports programs that are not included. Moreover, some of the entries do not specify types of sports offered, rather they simply list “adaptive recreational programming” as the offering at that university. Thus, 42 programs may be both an incomplete list and an overinclusive list; however, for purposes of this paper, the author will accept 42 as the best current total.

⁵ Mitsos, *supra* note 1, at 575.

⁶ Dayle Marie Comerford, *Article: A Call for NCAA Adapted Sports Championships: Following the Eastern College Athletic Conference's Lead to Nationalize Collegiate Athletic Opportunities for Student-Athletes With Disabilities*, 28 Marq. Sports L. Rev. 525, 547-548 (2018).

individuals participating in adaptive sports; however, the benefits to collegiate institutions have largely been overlooked.⁷ These benefits include greater numbers of potential students interested in enrolling⁸, better retention rates⁹, increased numbers of successful alumni¹⁰, and a more cohesive campus community¹¹, with greater diversity, equity, and inclusion.¹² In addition, campuses with adaptive sports programs can become leaders in the local community and provide support and training to other institutions seeking to grow and incorporate adaptive sports programs.¹³ Finally, by developing adaptive sports programs in conjunction with academic departments, collegiate institutions may be able to develop new degree programs built around adaptive sports.¹⁴ Because Collegiate institution's priorities and future objectives are driven in many ways by cost, long term benefits to the institutions and their students and alumni, and by

⁷ See Comerford, *supra* note 6; Ethan Lievense, *Adaptive Sports: Assessing the Inaugural Year of the ECAC and Adaptive Sport NCAA Championships* (August 2017) (unpublished M.A. thesis, University of North Carolina at Chapel Hill) (on file with the University of North Carolina at Chapel Hill library)

<https://cdr.lib.unc.edu/concern/dissertations/c821gm22f>; Mitsos, *supra* note 1.

⁸ Dr. Cottingham's research to help improve disability youth sport participation funded by NCAA, University of Houston (2015), <https://www.uh.edu/class/hhp/news-and-events/news-archives/2015/15-cottingham-NCAA-grant.php>; Işıl Tanyeri, Why should we invest in collegiate adaptive sports programs now? ABCmedical (Apr 23, 2017 10:57:01 PM), <https://www.abc-med.com/seedsofhope/why-should-we-invest-in-collegiate-adaptive-sports-programs-now>.

⁹ Mitsos, *supra* note 1, at 560-563.

¹⁰ Mitsos, *supra* note 1, at 560-563; Victoria Reljin, Effects of Adaptive Sports on Quality of Life in Individuals with Disability (Spring 2019), *Williams Honors College, Honors Research Projects* 822. (manuscript at 9), https://ideaexchange.uakron.edu/honors_research_projects/822.

¹¹ Mitsos, *supra* note 1, at 583; Comerford, *supra* note 6, at 541; Reljin, *supra* (manuscript at 9-10); Lievense, *supra* (manuscript at 10-11).

¹² Disability is diversity, University of California Santa Barbara Student Life, <https://studentlife.sa.ucsb.edu/equity-inclusion/grow/disability-diversity>; Diversity includes disability, University of Pittsburgh Office for Equity, Diversity, and Inclusion (Apr 19, 2024), <https://www.diversity.pitt.edu/diverse-populations/individuals-disabilities/diversity-includes-disability>; Support the CUNY adaptive sports program, #CUNYTUESDAY 2023, <https://www.cunytuesday.org/organizations/the-cuny-adaptive-sports-program>.

¹³ Drew Milne, Teamwork making dreams work: Arizona Adaptive Athletics Program helps kids with disabilities get active Teamwork Making Dreams Work: UArizona Adaptive Athletics Program Helps Kids with Disabilities Get Active, The University of Arizona Sonoran Center for Excellence in Disabilities (Sept. 29, 2023), <https://sonorancenter.arizona.edu/news/teamwork-making-dreams-work-uarizona-adaptive-athletics-program-helps-kids-disabilities-get>.

¹⁴ Adapted sports support well-being priorities, Media Hub, West Virginia University College of Applied Human Sciences (November 28, 2021), <https://media.appliedhumansciences.wvu.edu/stories/2021/11/28/adapted-sports-efforts-receive-support-through-wellness-initiative>.

the advancement of their original existing goals, it is important to recognize the institutional benefits of developing adaptive sports programs.

Part II of this paper assesses the legal landscape governing and framing the development of adaptive sports programs. Specifically, this section will discuss § 504 of the Rehabilitation Act of 1973 (Rehab Act or § 504)¹⁵, the Americans with Disabilities Act (ADA)¹⁶, a New Jersey statute aimed at adaptive sports¹⁷, and the *PGA Tour, Inc. v. Martin*¹⁸ case, which set the framework for interpretation of the ADA.¹⁹ Section III will assess the backdrop underpinning the benefits of growing the number of adaptive sports programs at collegiate institutions. In doing so, this section will assess the growing number of K-12 adaptive sports players and set the stage for the benefits collegiate institutions would have by adopting adaptive sports programs. Finally, Part IV will analyze the benefits collegiate institutions stand to gain through the development of adaptive athletics.

II. The Legal Landscape: The Pregame Part One: A Rules Primer

A. Section 504 of the Rehab Act

Congress passed the Rehab Act in 1973 intending to protect the rights of individuals with disabilities. The act requires that any person with a disability who is otherwise qualified cannot be denied participation solely on the basis of their disability.²⁰ In *Se. Cmty. Coll. v. Davis*, the Supreme Court reasoned that a person with a disability needed to meet all technical requirements

¹⁵ The Rehabilitation Act of 1973, 29 U.S.C. §§ 701-797.

¹⁶ Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq.

¹⁷ An Act concerning athletic activities of students with disabilities and supplementing chapter 11 of Title 18A of the New Jersey Statutes, 2014 N.J. S.N. 2079 (2014).

¹⁸ *PGA Tour, Inc. v. Martin*, 532 U.S. 661 (2001).

¹⁹ Mitsos, *supra* note 1, at 568-569.

²⁰ 29 U.S.C. § 794(a).

of the program, to be qualified; however, the Department of Education’s rules requiring that disabled athletes be given equal opportunity for participation indicates that their disability cannot be held against them in meeting the technical requirements of a specific sport or activity if a reasonable accommodation can be made to grant them the ability to participate.²¹

A § 504 claim requires a showing of four elements.²² A claimant must show (1) they meet the eligibility criteria for a disability as defined in § 705(9)(A) of the Rehab Act, (2) they meet the essential requirements of the program or activity with a reasonable accommodation (the “otherwise qualified” element), (3) an act of the defendant prevented the disabled individual from participating, reaping benefits, or being discriminated against because of their disability, and (4) the program or activity receives federal funding.²³ A reasonable accommodation is one that does not fundamentally alter the program, or require “undue financial or administrative burdens.”²⁴ Section 504 applies to federal programs and programs that receive federal grants.²⁵ Thus, private entities like the NCAA are exempt.²⁶ However, these entities are often covered under the broader scope of the ADA.

B. The Americans with Disabilities Act

In 1990, Congress passed the broad scope Americans with Disabilities Act “to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.”²⁷ The ADA’s three titles offer broad protections across a variety of

²¹ *Se. Cmty. Coll. v. Davis*, 442 U.S. 397, 405-406 (1979); Comerford, *supra* note 6, at 529-530.

²² Comerford, *supra* note 6, at 530.

²³ *Id.*

²⁴ *Id.*

²⁵ 29 U.S.C. § 794(a).

²⁶ *Id.*

²⁷ 42 U.S.C. § 12101(b)(1).

spectrums. Title I applies to employment and prevents employers from discriminating against individuals with disabilities in hiring practices.²⁸ Title II applies to public entities.²⁹ Title III applies to places of public accommodation and those who operate or lease them.³⁰

Although Title I could apply in contexts where the player is an employee of a team, in the collegiate environment Titles II and III are most relevant. Title II asserts that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefit of services, programs, or activities of a public entity or be subject to discrimination by such entity.”³¹ Title III provides “no individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.”³²

Under the ADA, covered entities in the sports context are required to make reasonable accommodations to allow disabled individuals to play, so long as the needed accommodation does not fundamentally alter the game.³³ Like the Rehab Act, the ADA applies to cases where an individual with a disability seeks an accommodation allowing them to participate in a traditional sport with a minor alteration, such as Casey Martin being allowed to use a golf cart to travel between holes during the PGA Tour.³⁴ Because the ADA and the Rehab Act do not require schools to create new sports, fully adaptive or unified sports are not seen as reasonable

²⁸ 42 U.S.C. §§ 12111-17.

²⁹ 42 U.S.C. §§ 12131-65.

³⁰ 42 U.S.C. §§ 12181-89.

³¹ 42 U.S.C. § 12131.

³² 42 U.S.C. § 1218.

³³ Comerford, *supra* note 6, at 532-533.

³⁴ *Martin*, 532 U.S. at 689-690.

accommodations.³⁵ While collegiate institutions have the most to gain from fully adaptive or unified sports, the requirement that they must provide an equal opportunity with reasonable accommodations to allow disabled athletes who are otherwise qualified individuals to play in the existing sports programs is also an important area for many qualified athletes who wish to participate in already existing programs.³⁶

C. PGA Tour, Inc. v. Martin

Casey Martin was a talented golf player who was born with Klippel-Trenaunay-Weber Syndrome, a circulatory disorder that caused severe pain and atrophy in his right leg, preventing him from walking an 18-hole golf course.³⁷ Beyond his pain, Martin's condition caused him to tire easily and also carried with it a significant risk of fracture and other severe issues such as clotting, which could necessitate an amputation of his leg.³⁸ Martin's skill earns him a spot on the PGA Tour; however, unlike the lower qualifying rounds where players were free to cart from hole the hole, the final qualifying and tournament rounds required players to walk between holes.³⁹ Martin's request to be allowed to utilize a golf cart to traverse the course during the upper rounds of the tournament was denied and Martin sued under Title III of the ADA.⁴⁰ Thus, the court needed to decide whether the use of a golf cart in the final qualifying and tournament rounds of the PGA Tour would be a fundamental alteration to the game.⁴¹

In *Martin*, the court identified two situations in which an alteration might be considered

³⁵ Mitsos, *supra* note 1, at 566.

³⁶ *Id.*

³⁷ *Martin*, 532 U.S. at 667-668.

³⁸ *Id.* at 668.

³⁹ *Id.* at 664-668.

⁴⁰ *Id.* at 669-670.

⁴¹ *Id.* at 665.

fundamental: first, if it alters “such an essential aspect of the game of golf that it would be unacceptable even if it affected all competitors equally” and second, if the change gave “a disabled player... an advantage over others.”⁴² The court also concluded that the ADA required an individualized inquiry of the given situation to determine whether the requested accommodation is reasonable in the specific context.⁴³ Ultimately, the court held that use of a golf cart did not fundamentally alter the game, because the walking rule was “not an indispensable feature of the tournament” and Martin’s physical condition impacted and fatigued him at a level likely greater than players walking the course.⁴⁴

Thus, under the analysis in *Martin*, ADA claimants must show that their requested modification does not fundamentally alter the game by either giving them an advantage or changing an essential rule or regulation of the game and courts must determine this through an individualized analysis.

D. New Jersey’s Act Concerning Athletic Activities of Students with Disabilities

In addition to the Federal Statutes, some states have begun passing laws that expand upon these federal protections. New Jersey is one such state. Section 18A:11-3.7 of New Jersey’s Act Concerning Athletic Activities of Students with Disabilities⁴⁵ requires school districts to ensure equal opportunity for disabled students to, “try out for and, if selected, participate in athletic programs in an integrated manner to the maximum extent appropriate to the needs of the student.”⁴⁶ The act also requires the school districts to “ensure the provision of reasonable

⁴² *Id.* at 682-683.

⁴³ *Id.* at 690.

⁴⁴ *Id.* at 685, 690-691.

⁴⁵ 2014 N.J. ALS 10, 2014 N.J. Laws 10, 2014 N.J. Ch. 10, 2014 N.J. S.N. 2079.

⁴⁶ N.J. Stat. § 18A:11-3.7(a)(1)

modifications or aids or services necessary” to make such participation possible.⁴⁷ The state act follows the Rehab Act and the ADA in excepting accommodations that are fundamental alterations, or create health and safety risks (for the disabled student or those they would be playing with).⁴⁸ However, if one of those exceptions applies, §18A:11-3.8 of the New Jersey act departs from its federal counterparts by further requiring school districts to make “reasonable efforts to provide a student with a disability the opportunity to participate in existing adapted or unified sports programs [or to perhaps] develop such programs on a school, district, regional, or county basis.”⁴⁹

Statutes such as these⁵⁰ have helped to foster the growth of an expanding K-12 population of disabled adaptive sports players.⁵¹ A number of students in the growing population are likely to be college bound and collegiate institutions stand to reap tremendous benefits by expanding adaptive sports programs and recruiting these students.

III. The Backdrop: Pregame Analysis

As the number of disabled students participating in sports at the K-12 level has grown dramatically these athletes are swiftly moving towards college where they face a landscape of minimal options given the paucity of adaptive sports programs offered by collegiate institutions. Thus, schools that expand or develop adaptive sports programs have before them a significant population of potential enrollees. At the schools that do offer adaptive sports, three models are

⁴⁷ N.J. Stat. § 18A:11-3.7(a)(2)

⁴⁸ N.J. Stat. § 18A:11-3.7(b)(1)-(2)

⁴⁹ N.J. Stat. § 18A:11-3.8

⁵⁰ Comerford, *supra* note 6, at 543-544 (discussing Maryland’s Fitness and Athletic Equity for Students with Disabilities Act, which served as a model for New Jersey’s legislation and was a groundbreaking foundational statute in this area).

⁵¹ *Id.* at 544.

representative—traditional sports with reasonable accommodations, completely adaptive sports, and unified sports.

A. Growing Population of High School Players

The number of adaptive sports athletes at the K-12 level should be enticing for any college as the dreaded demographic enrollment cliff looms on the horizon.⁵² In 2015, the National Collegiate Athletic Association (NCAA) funded a study by University of Houston Associate Professor, Dr. Michael Cottingham, “to examine the potential sport participation pool of youth with disabilities to educate the NCAA Student-Athletes with Disabilities Subcommittee on the landscape of disability sport participation and what sports are represented.”⁵³ Cottingham’s research showed a significant number of programs and participants across the United States.⁵⁴ He “identified 732 youth adaptive sports programs across the United States, with a total of 62,112 participants’ ages 18 years and under.”⁵⁵ At the time of Cottingham’s study, 31,770 youth adaptive sports players were 14 years old or younger, while the remaining 30,342 participants ranged from 15 to 18 years old.⁵⁶

While more recent data is lacking, Cottingham’s research provides a useful baseline as the number of youth adaptive sports participants he identified is likely the solid foundation for continued growth. Given the ongoing support and the increases in state-based efforts to provide greater numbers of opportunities to disabled students in their school districts⁵⁷ it is likely that the

⁵² Missy Kline, *The Looming Higher Ed Enrollment Cliff*, College and University Professional Association for Human Resources (Fall 2019), <https://www.cupahr.org/issue/feature/higher-ed-enrollment-cliff/>.

⁵³ Dr. Cottingham’s research, *supra* note 8.

⁵⁴ Tanyeri, *supra* note 8.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ See discussion of NJ statute in Section II(D), *supra*.

number of participants have and will continue to increase. Large numbers of these youth participants making the transition to college likely hoping to play adaptive sports creates fertile ground for college institutions to grow the limited adaptive sports options that currently exist at that level.

B. Lack of College Opportunities

Because there is no central governing body overseeing adaptive sports programs or competitions at the collegiate level, in the same way the NCAA does for traditional sports,⁵⁸ tracking the number of adaptive sports programs across the United States is difficult. In 2017, the number was placed at 21,⁵⁹ in 2019 the number was placed at 23,⁶⁰ and perhaps the most authoritative database hosted by the United States Olympic & Paralympic Committee placed the number at 42 in 2022.⁶¹ Utilizing the 2022 figures, this represents a tiny fraction of collegiate institutions in the United States: just 1.1% of the 3,982 degree-granting postsecondary institutions,⁶² and only 3.8% of the 1,118 collegiate members of the NCAA (Divisions 1, 2, and 3).⁶³ Although the number of programs has slowly advanced in an upward trajectory, it would take significant growth to improve this shockingly small number of programs offered.⁶⁴

⁵⁸ Comerford, *supra* note 6, at 527-529. The Eastern College Athletic Conference (ECAC) has taken some steps to organize adaptive sports competitions in its conference and has held some events in swimming and track and field.

⁵⁹ Cameron Rahman, 21 Colleges with Adapted Sports Programs, United Spinal Association (Jan 6, 2017), <https://unitedspinal.org/21-colleges-adapted-sports-programs/>.

⁶⁰ Collegiate Adaptive Sports, Challenged Athletes Foundation (August 2019), <https://www.challengedathletes.org/collegiate-adaptive-sports/> (adding San Diego State University, and the University of Michigan to the list of schools identified in 2017).

⁶¹ Collegiate Adaptive Sport Programs, *supra* note 4.

⁶² Josh Moody, How Many Universities Are in The U.S. And Why That Number Is Changing, U.S. News & World Report (April 27, 2021, at 9:30 a.m.), <https://www.usnews.com/education/best-colleges/articles/how-many-universities-are-in-the-us-and-why-that-number-is-changing>.

⁶³ The College Divisions Explained, Next College Student Athlete College Recruiting, <https://www.ncsasports.org/recruiting/how-to-get-recruited/college-divisions>.

⁶⁴ Rahman, *supra* note 59; Collegiate Adaptive Sports, *supra* note 60; Collegiate Adaptive Sport Programs, *supra* note 4.

There are geographic issues as well, with Dr. Cottingham’s study finding that two-thirds of the participants he identified were in underserved regions.⁶⁵ Dr. Cottingham identified 23,095 youth adaptive sports players in the “Western region” and an additional 17,840 in the “Southern region.”⁶⁶ Nineteen of the 42 colleges identified in 2022 fall within the southern or western region.⁶⁷ While that number sounds promising, 15 states in those regions remain without collegiate adaptive sport offerings.⁶⁸

Beyond the small number of schools with adaptive sports programs, the types of programs offered are also limited. Wheelchair basketball is, by far, the most common program being offered at 25 of the 42 colleges identified in 2022, with wheelchair tennis following at 11 of the 42 schools.⁶⁹ Other sports offered less frequently include wheelchair rugby, track and field, goalball, sled hockey, sitting volleyball, and one college offers wheelchair football.⁷⁰ Additionally, only 15 of the 42 schools offered at least two different types of adaptive sports, while only eight offered three.⁷¹ Thus, students seeking to play adaptive sports at the collegiate level are also more limited in their options of the type of sports available to them.

Therefore, there is immense potential for growth and significant enrollment opportunity for collegiate institutions that develop adaptive sports programs. Given Cottingham’s findings the Southern and Western regions have significant room for growth; however, the growth potential is worthy of attention nationwide.

⁶⁵ Tanyeri, *supra* note 8.

⁶⁶ *Id.*

⁶⁷ Collegiate Adaptive Sport Programs, *supra* note 4.

⁶⁸ *Id.* These states are Alaska, Hawaii, Nevada, New Mexico, Utah, Wyoming, Montana, Arkansas, Mississippi, Georgia, North Carolina, Tennessee, Kentucky, Virginia, and West Virginia.

⁶⁹ *Id.* Basketball is the only program offered at 14 of the 42 schools.

⁷⁰ *Id.*

⁷¹ *Id.*

C. Changes at the U.S. Olympic Committee

In 2019, the U.S. Olympic Committee elevated Paralympics under its umbrella and changed its name to the U.S. Olympic and Paralympic Committee (USOPC).⁷² That same year, recognizing that 80% of U.S. Olympic and 50% of U.S. Paralympic medalists at the 2020 Tokyo Games were collegiate sport participants, the USOPC Collegiate Advisory Council initiated its Olympians & Paralympians Made Here campaign hoping “to strengthen Olympic and Paralympic sport programming at the collegiate level” and to “elevate national engagement and support of Olympic and Paralympic sport opportunities on campus.”⁷³ The following year, Paralympians began receiving “the same medal award payment as their fellow Olympians.”⁷⁴

What these changes mean for adaptive sports at the collegiate level is not entirely clear; however, in 2023 the USOPC partnered with the NCAA Office of Inclusion to create the Para-College Inclusion Project aiming to “engage schools with adaptive sport while simultaneously increasing Paralympic sport understanding, awareness and connection across the collegiate landscape.”⁷⁵ This partnership was extended in 2024, and both organizations acknowledged “the critical role our NCAA member institutions play in building a pipeline for Team USA and for

⁷² History, United States Olympic & Paralympic Committee, <https://www.usopc.org/about-the-usopc/history#:~:text=In%201961%2C%20when%20major%20constitutional,United%20States%20Olympic%20%26%20Paralympic%20Committee.>

⁷³ Olympians & Paralympians Made Here, United States Olympic & Paralympic Committee, [https://www.usopc.org/olympians-and-paralympians-made-here.](https://www.usopc.org/olympians-and-paralympians-made-here)

⁷⁴ Tracy Ross, U.S. Paralympic, Olympic Ski and Snowboard Teams Merge in Push for Inclusivity, The Colorado Sun (Jun 19, 2023 12:33 PM), [https://coloradosun.com/2023/06/15/us-olympic-paralympic-ski-snowboard-teams-merge/.](https://coloradosun.com/2023/06/15/us-olympic-paralympic-ski-snowboard-teams-merge/)

⁷⁵ U.S. Olympic & Paralympic Committee and NCAA Office of Inclusion Announce First-Of-Its-Kind Paralympic Sport Advancements Across Three Sports, United States Olympic & Paralympic Committee (Feb. 16, 2023, 10:55 AM), <https://www.usopc.org/news/2023/february/28/us-olympic-paralympic-committee-and-ncaa-office-of-inclusion-announce-first-of-its-kind-paralympic-sport-advancements-across-three-sports.>

fostering lifelong health and wellness.”⁷⁶

In 2023 the partnership resulted in events highlighting Paralympic and adaptive sports, exhibitions, scrimmages, and skill showcases at NCAA championship events.⁷⁷ This included featuring the College All-Star Women’s Wheelchair Basketball Team during the Division II and Division III NCAA Women’s Basketball Championships halftime events.⁷⁸ The goals were to create “new pathways for student-athletes with disabilities on our college campuses” and to “promote inclusivity at [the] NCAA Women’s Final Four championship and events.”⁷⁹ In 2024, the partnership will again highlight para and adaptive sports at their championship events during halftime of the Division I Women’s Final Four championship and NCAA Division I tennis championships.⁸⁰ Additionally, 2024 will see the first crowning of wheelchair champions in a 100-meter race during the NCAA Division I Outdoor Track & Field Championships.⁸¹

The long-term impact of this partnership is uncertain; however, the serious intent put into organizing the partnership and the important role that collegiate institutions play in training Olympic athletes are hopeful signs that this partnership will result in the expansion of adaptive sports programs providing training for Paralympians and opportunity for other adaptive athletes.

D. Three Models of Adaptive Sport

There are three primary models of sports that can qualify as adaptive: traditional sports

⁷⁶ USOPC and NCAA Office of Inclusion Para-College Partnership Continues with Announcement of Marquee 2024 Activations, United States Olympic & Paralympic Committee (Mar. 28, 2024, 11:59 AM), <https://www.usopc.org/news/2024/march/28/usopc-and-ncaa-office-of-inclusion-para-college-partnership-continues-with-announcement-of-marquee-2024-activations>.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ U.S. Olympic & Paralympic Committee, *supra* note 75.

⁸⁰ USOPC and NCAA Office of Inclusion, *supra* note 76.

⁸¹ *Id.*

with reasonable accommodations, fully adaptive sports, and unified sports.⁸² This section examines each of these and argues that although fully adaptive would be ideal, unified sports may be the most realistic. It also argues that while traditional sports with reasonable accommodations should not be overlooked for those who qualify, the fundamental modification rule severely limits eligibility and, therefore, this model should not be seen as the goal or as a bypass to unified or fully adaptive programs.

i. Traditional Sports with Reasonable Accommodations

Traditional sports with reasonable accommodation are exactly what it sounds like, the standard game with a player with a disability playing with a reasonable change. As discussed *supra*, under the ADA and the Rehab Act reasonable accommodations are those which do not fundamentally alter the game, give the player with the disability an unfair advantage, or create undue financial cost or burden.⁸³ As the court decisions in *Davis*, *Martin*, and *Kuketz v. Petronelli* show only a limited number of players would be able to meet the requirements to be included in this model. First, they must be otherwise qualified to participate in a program under the rehab act.⁸⁴ Second under the Rehab Act or the ADA, their needed modifications must not fundamentally alter the game or give them an unfair advantage.⁸⁵ Finally, the modification must not pose a danger to the individual themselves or other players.⁸⁶ Given this, any player reliant on a wheelchair would likely be unable to qualify for the majority of traditional sports.

In *Martin*, the court held that the use of a golf cart to travel between holes did not

⁸² Mitsos, *supra* note 1, at 578-582.

⁸³ Comerford, *supra* note 6, at 530.

⁸⁴ *Davis*, 442 U.S. at 405-406.

⁸⁵ *Davis*, 442 U.S. at 405-406; *Martin*, 532 U.S. at 682-683.

⁸⁶ *Kuketz v. Petronelli*, 821 N.E.2d 473, 478 (2005).

fundamentally alter the game because the walking rule was only peripheral and not a fundamental aspect of the game.⁸⁷ Martin stood to shoot and still walked nearly a mile during the game.⁸⁸ Therefore, Martin was an otherwise qualified individual who could play all of the fundamental aspects of golf with the reasonable accommodation of traveling between holes with a golf cart.

In *Kuketz*, the court held that a wheelchair bound player receiving two hops before getting to the ball was a fundamental alteration to the game.⁸⁹ In racquetball, the central goal of the game is getting to the ball and hitting it back to your opponent after only one bounce.⁹⁰ Thus, allowing a wheelchair bound player a second bounce, even if the other player also has a second bounce, would be a fundamental alteration to the game.⁹¹ Therefore, *Kuketz* was not an otherwise qualified individual, because he could not meet all of the requirements of the game (getting to the ball in one bounce).

Because only a limited number of players with disabilities would be able to qualify for a reasonable modified traditional sport, given these requirements, many disabled athletes would remain on the sidelines if this were the primary model. Thus, while traditional sports with reasonable modifications should be supported and encouraged for those candidates who qualify, it should not be seen as a replacement for or a way around fully adaptive or unified sports which better provide equal opportunity for larger numbers of disabled athletes.

ii. Fully Adaptive Sports

⁸⁷ *Martin*, 532 U.S. at 683.

⁸⁸ *Id.* at 671-672.

⁸⁹ *Kuketz*, 821 N.E.2d at 478.

⁹⁰ *Id.* at 479.

⁹¹ *Id.* at 479-480.

In a fully adaptive sports model, altered versions of traditional sports are played by teams of all disabled players.⁹² Wheelchair basketball is perhaps the most recognizable version of a fully adaptive sport; however, a variety of other sports such as wheelchair tennis, wheelchair track and field, and wheelchair football are all examples of this model.⁹³ Unlike traditional sports with reasonable accommodations, in the fully adaptive sports model the rules of the game are designed with the needs of the disabled athletes in mind creating a unique version of the game allowing for individuals with disabilities to compete on an equal playing field.

The two-bounce accommodation requested by the player in *Kuketz* is the standard rule in wheelchair racquetball.⁹⁴ Because of the realities of playing from a wheelchair—changed maneuverability, needing to hold a racquet while piloting their chair—the creators of wheelchair racquetball recognized that it was more realistic for a player to get to the ball in two bounces, rather than the traditional one bounce.⁹⁵ Furthermore, the rules also provide for a maintenance break to repair issues that might crop up with a wheelchair during the game, and also alters other standard rule language to be more applicable to a wheelchair specific context.⁹⁶ Thus, in this fully adaptive model, the baseline rule is one that provides for a realistic playing field for individuals with disabilities.

Because the rules are created specifically for disabled athletes, fully adaptive sports expand the eligibility to a much wider variety of players than the traditional model with reasonable accommodations. This, of course, is the ideal version of an adaptive sports program;

⁹² Comerford, *supra* note 6, at 539.

⁹³ Collegiate Adaptive Sports, *supra* note 60.

⁹⁴ USA Racquetball Rules: 7 - Wheelchair Racquetball, USA Racquetball, <https://www.usaracquetball.com/play/rules/7-Wheelchair-Racquetball>.

⁹⁵ *Id.*

⁹⁶ *Id.* One example is altering the rules around bodily contact to include all parts of a wheelchair and not just the physical body as in the traditional rules.

however, several issues make this model challenging at the outset of an expansion of adaptive sports. First, although there are significant numbers of disabled athletes under the age of eighteen progressing towards college, the geographic distribution of collegiate institutions coupled with the need for numerous players to fill out team rosters across multiple campuses to provide for competitive matches are difficult tasks at the outset.⁹⁷ Additionally, there are financial implications in terms of modifications to campus facilities and the purchasing of equipment necessary such as sports wheelchairs for wheelchair basketball, which impacts the calculation in terms of weighing the benefits of implementing a fully adaptive sports program.⁹⁸

While this model should be the long-term goal, it may not be the most practical means of expanding adaptive sports access at the collegiate level at the outset.

iii. Unified Sports

Because unified sports offer a solution to some of the issues presented under a fully adaptive sports program, they may provide the most practical and best means of getting the expansion off the ground. In unified sports, teams play fully adaptive sports games, but the players are not all disabled.⁹⁹ In this model, rosters are filled out by non-disabled athletes playing under the same conditions in conjunction with their disabled counterparts.¹⁰⁰ For example, a unified sports version of wheelchair basketball would find all players, regardless of their ability status, playing in wheelchairs utilizing the rules of wheelchair basketball.

Such a program creates a workaround for some of the geographic and quantity of player

⁹⁷ Comerford, *supra* note 6, at 547-548.

⁹⁸ Mitsos, *supra* note 1, at 575.

⁹⁹ Comerford, *supra* note 6, at 540-541. Typically, the non-disabled “partners” can only account for a certain percent of the roster and other rules limit their impact on scoring.

¹⁰⁰ *Id.*

issues that hamper fully adaptive sports, without compromising the eligibility of disabled players. Over time once programs are established and increased numbers of students with disabilities are participating, schools may find they have continuous capacity enough to fill out rosters and could then transition to fully adaptive sports programs but there are also benefits to unified sports that are absent in fully adaptive sports.

Unified sports connect disabled and non-disabled athletes and bind them together in ways that would not take place in a fully adaptive program.¹⁰¹ These connections and unity building have the potential to improve campus climate and change perceptions of students with disabilities within the campus community.¹⁰²

Thus, while fully adaptive sports programs are the ideal, unified sports are both a promising starting place and institutions with lasting value that should have a place in the collegiate landscape even when fully adaptive sports take hold.

IV. Game Day: The Benefits Collegiate Institutions Stand to Gain from Adaptive Sports Programs

There are a number of benefits collegiate institutions stand to gain by building adaptive sports programs. Chief among these is of course enrollment, with the additional benefit of working to advance their diversity, equity, and inclusiveness (DEI) goals. Moreover, collegiate institutions stand to become leaders in the field of adaptive sports through the development of expertise gained, and they can potentially develop new degree programs in conjunction with them. They also stand to gain national and international recognition as leaders in disability

¹⁰¹ *Id.* at 541.

¹⁰² Mitsos, *supra* note 1, at 583.

inclusivity, training of successful Paralympic athletes, and champions in collegiate adaptive sports competitions. Finally, the standard benefits colleges gain from students' participation in collegiate sports translate to disabled athletes—the benefits of retention, improved performance in the classroom, better job prospects and performance post-graduation, and committed disabled alumni likely to contribute to the institutions and adaptive sports programs they identify with. Because of the limited number of adaptive sports programs and the future facing nature of the potential benefits, the arguments in this section are more qualitative and aspirational than concrete.

A. Enrollment

Because enrollment concerns drive collegiate institutions decision-making processes the growing number of disabled athletes in the K-12 system should be an enticing lure for developing adaptive sports. Given the number of disabled athletes playing adaptive sports at the K-12 level, as noted *supra* 62,000 according to one study, implementing adaptive sports programs can be a great recruitment tool allowing schools to reach students who otherwise may not have considered their campuses.¹⁰³ There are of course many factors which go into the decision-making process of selecting a college to attend; however, for many athletes the ability to participate in sports is a primary concern given the benefits of such participation.¹⁰⁴ Thus, because of the limited opportunities for disabled athletes wishing to play adaptive sports programming, collegiate institutions stand to reap significant enrollment benefits by developing

¹⁰³ Dr. Cottingham's research, *supra* note 8; Tanyeri, *supra* note 8.

¹⁰⁴ Edward G. Howat, Factors Influencing Student-athlete Choice of Institution (May 1999). East Tennessee State University *Electronic Theses and Dissertations* paper 2923. (manuscript at 20-21), <https://dc.etsu.edu/etd/2923> (identifying six factors of consideration for athletes in selecting a college); *see also* Dave Simonson, College Transition for Athletes in Adaptive Sports Move United, <https://moveunitedsport.org/college-transition-for-athletes-in-adaptive-sports/> (adding additional considerations for athletes with disabilities).

programs to attract students hoping to play adaptive sports at the collegiate level.

While enrollment is always important, the looming enrollment cliff created by the downturn in childbirth in the United States during the 2008 recession makes this even more critical.¹⁰⁵ The population of disabled students interested in adaptive sports offers a potential lifeline through this period since many of them could be attracted to campuses that offer adaptive sports programs if given such an opportunity. While this downturn likely also impacted the birth of disabled children, the large block of potential participants with minimal options would be a significant recruitment opportunity—new students, transfers, and non-traditional—for collegiate institutions who open the doors by offering adaptive sports programs.

Furthermore, building institutional capacity both in knowledge and physical infrastructure to make an adaptive sports program successful, would likely have other benefits that affect enrollment—more accessible campuses and greater responsiveness to the needs of students with disabilities. Thus, it would likely also open the door to greater enrollment from disabled students who are not interested in adaptive sports programming, but who would be open to attending a collegiate institution for other reasons such as degree programs, geographical location, or one of the varieties of other things that attracts students to different colleges.

Therefore, building an adaptive sports program would likely open significant doors to recruiting two populations of students who otherwise might not have considered that university.

B. Diversity, Equity, and Inclusion Initiatives

A second significant consideration for many collegiate institutions is DEI initiatives and

¹⁰⁵ Kline, *supra* note 52.

goals, which adaptive sports programs can be a valuable tool in helping to advance. Given the known benefits of exposure to a diverse range of individuals and viewpoints at collegiate levels, colleges and universities prioritize trying to welcome classes of qualified individuals with the broadest possible spectrum of diversity and inclusiveness.¹⁰⁶ Individuals with disabilities are typically a target group for such initiatives and creating adaptive athletic programs would be a significant draw for college bound qualifying individuals.¹⁰⁷

The City University of New York (CUNY) is one institution that recognizes this benefit. In its 2023 fundraising drive, CUNY asserted that, “The effort to make CUNY a first-choice destination for a student athlete with disabilities aligns with our University’s diversity, equity, and inclusion (DEI) mandate.”¹⁰⁸ Moreover, in addition to promoting Paralympic and adaptive sports at NCAA championship events, the USOPC/NCAA Para-College Inclusion Project also strives to support diversity, equity and inclusion initiatives.¹⁰⁹

Thus, in addition to the enrollment benefits, universities prioritizing DEI stand to reap significant advances in those areas as well, by opening the doors to disabled athletes wishing to play adaptive sports.

C. Leaders in The Field of Adaptive Sports, New Degree Programs, and Institutional Recognition

In addition to enrollment and DEI benefits, incorporating adaptive sports programs has other significant and practical benefits for collegiate institutions. One of these is the development

¹⁰⁶ *Grutter v. Bollinger*, 539 U.S. 306, 330-332 (2003).

¹⁰⁷ Disability is diversity, *supra* note 12; Diversity includes disability, *supra* note 12

¹⁰⁸ Support the CUNY adaptive sports program, *supra* note 12.

¹⁰⁹ USOPC and NCAA Office of Inclusion, *supra* note 76.

of expertise in adaptive sports which allows the university to become a leader in this area and in turn help advance the goals of adaptive sports growth across the country. One example of this is the University of Arizona's training program.¹¹⁰ Through this program, coach Pete Huges, the University of Arizona adaptive sports staff, and disabled athletes, provide training and resources—such as sports wheelchairs for wheelchair basketball—to Tucson, AZ K-12 schools seeking to initiate adaptive sports programming.¹¹¹ The main goal of the program is to build local opportunities for disabled athletes, which the University of Arizona recognized as lagging because the majority of their “Adaptive Athletics athletes come from outside the Tucson area.”¹¹² Programs like this can be a model for other schools, while building and expanding exposure to adaptive athletics across the United States in lagging K-12 school systems, as well as youth programs, community centers, and gyms.¹¹³ In building a local adaptive sports population, collegiate institutions would enhance their own future enrollment and earn significant reputational benefits as leaders in disability equality.¹¹⁴

In turn, collegiate institutions may engender support and sponsorship from partners serving the community. For example, the Guardian Life Insurance Company of America (Guardian), which is a leading disability insurer recently partnered with the University of Michigan to create an adaptive student athletics program.¹¹⁵ Sponsorship like Guardian’s multi-year grant can offset the financial cost involved in creating adaptive sports programming, which

¹¹⁰ Milne, *supra* note 13.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ Guardian and the University of Michigan partner on New Adaptive Student Athlete Program (ASAP): News, Insurance and benefits with a purpose, Guardian (Apr 24, 2023), <https://www.guardianlife.com/news/release/new-adaptive-student-athlete-program-asap-expands-access-to-top-tier-competitions>.

can be an obstacle to initiating such programs.¹¹⁶ Like the University of Michigan and Guardian partnership, the University of Arizona's adaptive sports program receives support from the Jim Click's Run 'N' Roll annual run, walk and wheelchair race in Tucson, AZ.¹¹⁷

A second potential benefit arising out of adaptive sports programming is the possibility of developing new academic degrees or concentrations tied to the programs. In 2021 West Virginia University's (WVU) Physical Education Kinesiology (PEK), and Athletic Coaching program began to integrate sports wheelchairs into their courses to teach racket and basketball sports to their majors.¹¹⁸ Although WVU does not appear to offer adaptive athletics, it's easy to see how students in their PEK and Athletic coaching majors could work with and benefit from such a program if it existed. Additionally, WVU's initiative has created tangential benefits by offering graduate students the opportunity to write grant proposals in support of and to expand the program.¹¹⁹ In other contexts, universities with medical schools that offer adaptive athletics might offer degrees in adaptive sports physiology or medicine, allowing their students to partner with the adaptive athletic teams to conduct research and develop expertise in adaptive sports.

Finally, colleges receive reputational benefits through the training of students who are also Olympic participants and adaptive sports would expand these benefits to Paralympics participants. Paralympians have sought this kind of training for many years; however, resources

¹¹⁶ *Id.*

¹¹⁷ Jim Click's Legacy, The University of Arizona Adaptive Athletics Disability Resources, <https://adaptiveathletics.arizona.edu/history/jim-clicks-legacy>. Jim Click owns a large automotive group in Arizona and began supporting the University of Arizona's adaptive athletics program in 1985, after a severe spinal injury to one of his employees during a touch football game accident. Following the accident and extensive rehabilitation, Richard Nolen, the employee, returned to the University of Arizona where he had a successful wheelchair track and road racing career, while earning a master's degree in business. Nolen went on to become the Jim Click Automotive Team Chief Operating Officer.

¹¹⁸ Adapted sports support, *supra* note 14.

¹¹⁹ *Id.*

in this area are severely lacking.¹²⁰ For example, in 1981, Renee Kirby a gold medal winner at the 1980 Holland Paralympic Games began attending Temple University as a therapeutic recreation student.¹²¹ Kirby expected to return to the 1984 Paralympic Games in Atlanta as a member of Team USA and needed training to prepare.¹²² Despite having “one of the largest population of students with a disability on the East Coast,” there were no Temple programs available to train Kirby.¹²³ These needs have been recognized by the USOPC through their Olympians & Paralympians Made Here campaign and their Para-College Inclusion Project created in partnership with the NCAA. While these are important steps, much work remains.¹²⁴

D. Traditional Benefits of Athletic Participation Among Disabled Athletes

Finally, one of the main benefits of adaptive sports programming are the same benefits that come with traditional sports at the collegiate level—better retention, better performance, better job outcomes, better leadership outcomes, more connected to the campus, and more incentivized donating by alumni.¹²⁵ In addition to its recognition of the DEI benefits, the CUNY fundraising page for their adaptive sports program goes on to state: “[T]he program also positively impacts our colleges’ retention. Studies by adaptive sports researchers show that students with disabilities who participate in adaptive sports have a higher level of college completion and career success than their disabled peers who do not participate in athletics.”¹²⁶

In addition to enrollment, performance and retention are key goals of collegiate

¹²⁰ Tanyeri, *supra* note 8.

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.* As part of her undergraduate senior project, Kirby worked to build an adaptive sports program, ultimately creating “the Rollin’ Owls wheelchair basketball team, which became one of the highest-ranking collegiate wheelchair basketball teams on the East Coast and lasted through 2012.

¹²⁴ Olympians & Paralympians Made Here, *supra* note 73; U.S. Olympic & Paralympic Committee, *supra* note 75.

¹²⁵ Mitsos, *supra* note 1, at 560-563.

¹²⁶ Support the CUNY adaptive sports program, *supra* note 12.

institutions; therefore, the cyclical benefits of enrollment, performance, and retention that can grow out of adaptive sports programming are major assets available to any collegiate institution willing to incorporate adaptive athletics. Additionally, colleges rely on their alumni as major contributors to both the campus itself and to their athletic programming. Disabled alumni with better job outcomes and better careers who are more connected to their campuses because of their participation in adaptive sports programming, expand this traditional benefit to adaptive sports programs.

Thus, although there is an initial financial hurdle to getting such programs off the ground, participation in such programs by alumni is likely to lead to a long-term support base for adaptive sports programs. Therefore, collegiate institutions' upfront payout is really a long-term investment to draw in the support of a new and untapped population of adaptive athletes.

V. Conclusion: The Post-Game

This paper argued that adaptive sports hold significant benefits for the collegiate institutions that build and offer these programs. These benefits occur across many aspects of collegiate life. Benefits like enrollment, retention, and DEI initiatives offer practical administrative considerations, while improved performance, and potential new degree programs fall on the academic side of the ledger. Additionally, reputational benefits can accrue through more successful alumni, community leadership in the field of adaptive athletics, and through the training of successful Paralympians and adaptive athletic champions. There are, of course, challenges, but they can be overcome and the rewards for doing so are numerous.