



CAMPUS COUNSEL

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Reasonable Application of Return-to-Play Policy is Critical to Defense of Disability Discrimination Claims Brought by Student Athletes

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On November 13, 2015, the U.S. Court of Appeals for the Fourth Circuit issued its ruling in the case of *Class v. Towson University*, overturning the finding of the trial court that Towson University's application of its Return-to-Play Policy resulting in the exclusion of Mr. Class from participation in the University's football program constituted disability discrimination under the ADA and Section 504.

In August 2013, Mr. Class, a starting Lineman for the University's football team, collapsed from exertional heat stroke during a team practice. As a result of the heat stroke, Mr. Class fell into a coma and suffered multi-organ failure, requiring several surgeries to save his life, including a liver transplant. The heat stroke and subsequent treatment left Mr. Class with a permanently weakened abdominal wall, compromised immune system and a heightened susceptibility to heat stroke. Despite these challenges, Mr. Class, after completing a rigorous rehabilitation program, applied for reinstatement to the football team. However, Mr. Class required several accommodations to participate in the football program including additional abdominal padding and frequent body core temperature monitoring by team training staff using a sophisticated ingestible sensor system.

Consistent with NCAA requirements and national best practices, the University maintained a written Return-to-Play Policy under which the Team Physician had the final authority to decide if and when an injured student-athlete may return to practice or competition. Ultimately, after reviewing Mr. Class' medical records, the results of specialized testing conducted by experts in the field of body core temperature regulation, and consultation with other physicians, the Team Physician denied Mr. Class' request for reinstatement based on the determination that Mr. Class' condition subjected him to a significant risk of injury and death from further participation in the football program and that no accommodation existed that could adequately protect him.

On these facts, the Appeals Court determined that Mr. Class could not meet his burden to establish the existence of an

actionable claim for disability discrimination in this matter because, in part, the University's Return-to-Play Policy was fair and reasonable and that the requirement to receive clearance from the Team Physician before returning to the program following an injury was a legitimate essential eligibility requirement for participation because the Team Physician's determination was reasonably made based upon an individualized review Mr. Class' condition and was supported by competent medical evidence.

Client Tip: *This case highlights the need for Institutions to implement and follow policies concerning eligibility and participation for athletic programs and to ensure that decisions concerning a student-athlete's ability to return to play and the evaluation of possible accommodations are based on a supportable medical opinion made by a competent medical professional with knowledge of the athlete's specific circumstances.*