



December 28, 2021

Jay Bellar
Executive Director
Nebraska School Activities Association (NSAA)
500 Charleston Street – Suite 1
Lincoln, NE 68508-1119
jbellar@nsaahome.org
Sent Via E-mail

Re: Paul Ruff – 2021 State Wrestling Championship

Dear Mr. Bellar,

Please be advised that the ACLU of Nebraska and the National Association of the Deaf (NAD) represent Paul Ruff, a deaf Nebraska high school athlete, regarding his claims arising from the discrimination he suffered during the 2021 Nebraska State Wrestling Championship, denying him reasonable modifications and a fair opportunity to win the state championship.

By way of introduction, we want to take a moment to introduce our respective legal advocacy organizations. For over 50 years in Nebraska, the ACLU has worked in courts, legislatures, and communities to protect the constitutional and individual rights of *all* people. With a nationwide network of offices and millions of members and supporters, we take up the toughest civil liberties fights in an effort to create a more perfect union.

Established in 1880, the NAD is the nation's premier advocacy organization of, by, and for deaf and hard of hearing individuals in the United States of America. The NAD seeks to ensure that all public accommodations, including privately operated businesses that are generally open to the public, understand their legal obligations with respect to serving deaf and hard of hearing customers.

As such, we are proud to represent Paul Ruff and his family in this important matter. Paul Ruff, was a high school senior during the 2020-21 school year who wrestled in NSAA competitions throughout high school. Paul is deaf and relies on lip reading when he wrestles. Before and during the 2021 State Wrestling Championship, the NSAA and Dr. Bryce Abbey, the referee for Paul's match, knew Paul was deaf and knew Paul used lipreading.

Even so, the NSAA assigned the sole masked referee present at the 2021 Wrestling Championship to the first-place title match between Paul Ruff and Paul Garcia on February 20, 2021. Before this

match, our client, Paul had never been penalized for a similar line violation as a high school wrestler. He had also never wrestled a match where the referee wore an opaque mask-presumably due to public health considerations, obstructing his mouth and nose and yelling warnings through the mask. However, Dr. Abbey wore such a mask while refereeing this final critical championship match despite having knowledge that Paul is deaf and uses lipreading as the primary means of communication. As a result, Paul could not see Dr. Abbey's mouth and could not heed verbal warnings. Because Paul could not heed the verbal warnings, Dr. Abbey issued a caution point, which combined with an earlier caution point, awarded Paul's opponent one full point. As a result, Paul lost the match 0-1.

Title III of the Americans with Disabilities Act (ADA) has a clear mandate requiring public accommodations to ensure effective communication with deaf individuals so that they have full and equal enjoyment of the services provided by public accommodations.¹ Section 504 of the Rehabilitation Act of 1973 provides that no otherwise qualified individual shall, solely by reason of his or her 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.² The requirement to provide effective communication and full and equal access to services includes the provision of captioning for any aural and video content. Furthermore, in *PGA Tour, Inc. v. Martin*, the U.S. Supreme Court held that the ADA requires sport governing bodies to provide reasonable modifications necessary to enable an athlete with the requisite physical ability and skills to participate in a sport or athletic competition despite his or her disability.³ The ADA thus requires sport governing bodies to make reasonable modifications to their rules when necessary to enable individuals with disabilities to have access to athletic competitions, unless doing so would "fundamentally alter" their nature and be an "undue burden".⁴

It is clear, as hundreds witnessed and recordings demonstrate, that Paul was denied an equal opportunity to win due to the failure of the NSAA and Dr. Abbey to accommodate his well-known disability during the highly anticipated match. The NSAA's deliberate indifference to Paul's disability violated Title III of the ADA, Section 504 of the Rehabilitation Act of 1973, and Section 2.14 of the NSAA Bylaws, which states "[The NSAA] shall support equal opportunities for all students regardless of race, religion, gender, national origin, or *disability*." (emphasis added). The discrimination could easily have been avoided had Dr. Abbey simply lowered his mask during the match, as other officials had done for Paul throughout the season; used a clear face mask or shield; or otherwise effectively communicated warnings. None of these simple and reasonable modifications would have amounted to an undue burden or a fundamental alteration of the nature of the wrestling match.

Other organizations, including the NAD, have contacted the NSAA in support of Paul. The Ruffs are wholly dissatisfied with the NSAA's response. Instead of choosing the means to ensure effective communication between the referee and Paul during the match, the NSAA failed to

¹ Americans with Disabilities Act tit. 3, 42 U.S.C. §§ 12181-12189.

² 34 C.F.R. § 104.4.

³ 532 U.S. 661 (2001).

⁴ 42 U.S.C. § 12182.

provide any modifications at all. Specifically, the Ruffs feel that the NSAA has discriminated against Paul by:

- (1) failing to provide reasonable modifications to Paul during the match;
- (2) dismissing the Ruff's concerns and appeals at the arena after the match;
- (3) construing the issue as a "judgment call" made by the referee;
- (4) blaming Paul and his coach for not making a formal request for accommodation after the fact;
and
- (5) publicly asserting Paul clearly understood the referee during the match.

Since February, the NSAA's only response was to agree to implement cultural competency classes. However, when those trainings were provided, Dr. Abbey responded by contacting the Nebraska Commission for the Deaf and Hard of Hearing (NCDHH) to bolster his claim that he is without fault.

The Ruffs are disappointed and surprised that the NSAA has chosen to deny its fault and instead punish a student athlete with a disability for the NSAA's mistake. Advocates for individuals with disabilities and hundreds who have watched the match have called on the NSAA to right this wrong. Based on the public's response and the governing law, we think it is clear that the NSAA's actions here were in violation of the law and NSAA's response to the matter after the fact have been wholly inadequate.

Through endless hours of training and hard work, Paul earned his place at the State Championship; however, the callous indifference of the NSAA and its agents denied Paul the opportunity to take home the title because of his disability which permanently marred his record of achievement and could have impacted his future opportunities. Neither the NSAA's disregard of Paul's disability, nor its failure to take responsibility, is acceptable.

We therefore call upon the NSAA to take the following actions:

1. Issue a public acknowledgement and apology that Paul was not afforded a fair and equal opportunity to win the match due to NSAA and Dr. Abbey's conduct which violated the law;
2. Add specific provisions to the NSAA Bylaws requiring the accommodation of deaf wrestlers by utilizing clear face masks or face shields when face coverings are required due to public health concerns in combination with agreed-upon hand gestures to signal warnings, and providing a ringside sign language interpreter upon request regardless of whether masks are required for public health considerations;
3. Require annual training for all NSAA stakeholders on how to meet best practices to ensure equal access and opportunity for student athletes who are deaf or hard of hearing or who have other sensory impairments;
4. Censure, suspend, or revoke Dr. Abbey's referee card; and
5. Pay a reasonable amount of compensatory damages to Paul and his family.

You may respond to this demand either by email (rgodinez@aclunnebraska.org) or by telephone (402.300.8329). We expect a response on or before January 18, 2022.

In closing thank you for your time and consideration of this matter. We are hopeful that we can find a path forward that ensures justice for Paul Ruff and to ensure that NSAA adopts best practices to ensure no other student athletes are denied an opportunity to access, compete in, and win NSAA activities.

Sincerely,

Rose Godinez
Interim Legal Director
ACLU of Nebraska

Brittany Shrader
Senior Attorney
National Association of the Deaf

CC: NSAA Board of Directors