

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA**

ALEX BROWN and TRENT CLAYTON,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

PENNSYLVANIA INTERSCHOLASTIC
ATHLETIC ASSOCIATION INC.,

Defendant.

Civil Action No. 2:21-cv-1119

CLASS ACTION COMPLAINT

Alex Brown and Trent Clayton, on behalf of themselves and other student athletes, bring this action against Pennsylvania Interscholastic Athletic Association Inc. seeking an equal opportunity for wheelchair and other para-ambulatory athletes to qualify for and, upon qualification, compete in PIAA's Track and Field Championships, beginning in 2022.

NATURE AND SUMMARY OF THE ACTION

1. PIAA regulates interscholastic athletic competition in Pennsylvania.
2. Although PIAA requires member schools to accommodate some Para athletes¹ during the regular season, no process exists for Para athletes to qualify for and, upon qualification, compete in PIAA's end-of-season Track and Field Championships.
3. That's because, according to PIAA, "[t]rack and field events administered by PIAA are intended for participation by **able-bodied** athletes[.]" only.²

¹ Plaintiffs use the term "Para athlete" to describe individuals who have a permanent physical disability and who compete, will compete, or have been deterred from competing in high school track and field in Pennsylvania.

² 2020-21 PIAA Policies and Procedures, PIAA, pp. 125-27 (Ex. A) (emphasis added).

4. PIAA's Equal Opportunity Statement does not even mention "disability."³

5. This action seeks an injunction ordering PIAA to update its able-only policy to ensure wheelchair and other para-ambulatory athletes have the same opportunity as their classmates, beginning in the 2022 season, to qualify for and, upon qualification, compete in PIAA's high school track and field championships.

6. Although PIAA claims it "simply is not equipped to offer the broad range of interscholastic competitive opportunities which might be desired or preferred,"⁴ at least 27 other state high school associations maintain a wheelchair division for track and field. Of these states, at least 12 also maintain a separate division for para-ambulatory athletes who do not use a wheelchair to compete.⁵

7. By failing to maintain a process for these student athletes to qualify for and compete at PIAA's track and field championships, PIAA has denied Alex, Trent, and other students "the values of competition/participation and performance," which PIAA states should be made available to students "at every conceivable opportunity."⁶

³2020-21 PIAA Constitution and By-Laws: Equal Opportunity Statement, PIAA, p. 1 (Ex. B) ("The Pennsylvania Interscholastic Athletic Association, Inc. (PIAA) believes that all boys and girls should have equal opportunity to participate in all levels of interscholastic athletics regardless of race, color, sex, creed, religion or ethnic background.").

⁴ Ex. A, p. 125.

⁵ *State High School Associations with Adaptive Sports Programming*, https://www.atfusa.org/HIGH_SCHOOL/Integrated%20State%20High%20School%20Athletic%20Programs_1.29.19.pdf (last accessed Aug. 23, 2021).

⁶ According to PIAA, "[i]nterscholastic athletics remain the best 'deal,' educationally and financially in America today. All administrators, teachers, coaches, and parents should know, understand and sell, **at every conceivable opportunity**, the values of competition/participation and performance, as those values are the same for students in grades 7 through 12, whether they finish 1st or 101st." *Our Philosophy*, PIAA (emphasis added), <http://www.piaa.org/about/philosophy.aspx> (last accessed Aug. 23, 2021).

8. For the same reason, PIAA has also violated Titles II and III of the Americans with Disabilities Act of 1990 as amended, 42 U.S.C. §§ 12132, 12182 (“ADA”), and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (“Section 504”).

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because the claims arise under the laws of the United States.

10. Venue is proper in the Western District of Pennsylvania pursuant to 28 U.S.C. §§ 1391(b) and (c) because Alex resides and attends high school in this District; PIAA sets standards and operates track and field meets in this District; and PIAA has sufficient minimum contacts with this District.

PARTIES

Alex Brown

11. Alex is a 15-year-old student at North Catholic High School in Cranberry Township, Pennsylvania, where he will be a sophomore this fall.

12. Alex expects to graduate from North Catholic High School in 2024.

13. Like many students across Pennsylvania, Alex enjoys track and field.

14. Alex uses a wheelchair to participate in extracurricular athletics, including track and field.

15. That’s because Alex suffered a spinal cord injury when he was four years old and is substantially limited in one or more major life activities, including, but not limited to, walking, bending, and standing.

16. As a result, Alex is a qualified individual with a disability under the ADA.

Trent Clayton

17. Trent is an 18-year-old student in West Chester, Pennsylvania.
18. Trent expects to graduate from high school in 2022.
19. Like many students across Pennsylvania, Trent enjoys track and field and has been a member of the at West Chester East High School track and field team since 2018.
20. Trent has cerebral cavernoma, a vascular abnormality of the central nervous system that substantially limits Trent in one or more major life activities, including, but not limited to, walking, lifting, and bending.
21. As a result, Trent is a qualified individual with a disability under the ADA.

Pennsylvania Interscholastic Athletic Association Inc.

22. PIAA is a non-profit corporation with its principal place of business in Mechanicsburg, Pennsylvania.
23. PIAA is the only statewide sports association in Pennsylvania and the only organization that maintains state high school championships in Pennsylvania.

FACTS

24. Alex began competing in track and field when he was ten years old.⁷
25. As a freshman in 2021, Alex competed in the 100-meter dash and shot put for the North Catholic Trojans.⁸

⁷ Deborah Deasy, *Charity founded by Cranberry couple helps children with spinal cord problems 'Rise Again'*, Trib Total Media (Jan. 18, 2016), <https://archive.triblive.com/news/charity-founded-by-cranberry-couple-helps-children-with-spinal-cord-problems-rise-again/> (last accessed Aug. 23, 2021).

⁸ John Enrietto, *Ultimate Teammate: North's Brown scoring points from wheelchair*, Cranberry Eagle (Apr. 21, 2021), <http://www.cranberryeagle.com/article/20210421/CRAN0102/704219995> (last accessed Aug. 23, 2021).

26. Alex earned a varsity letter in track and field for North Catholic by competing at individual meets during the 2021 regular season and at the WPIAL Track and Field Team Championships, where he completed the 100-meter dash in 23.57 seconds and recorded a best throw of 11 feet, 1 inch in the shot put.

27. WPIAL stands for Western Pennsylvania Interscholastic Athletic League.⁹

28. WPIAL is one of twelve districts governed by PIAA's Constitution and By-Laws.

29. WPIAL consists of schools in ten counties, including Allegheny, Armstrong, Beaver, Butler, Fayette, Greene, Indiana, Lawrence, Washington, and Westmoreland.

30. Since 2018, Trent has competed in the discus and shot put for the West Chester East Vikings.

31. Trent's personal record in the discus is 83 feet, 4 inches. His personal record in shot put is 22 feet, 8 inches.

32. West Chester East High School is part of PIAA District One.¹⁰

33. Like WPIAL, District One is one of twelve districts governed by PIAA's Constitution and By-Laws.

34. District One consists of schools in four counties, including Bucks, Montgomery, Chester, and Delaware.

35. Each year, WPIAL, District One, and the remaining PIAA districts host end-of-season track meets to determine which student athletes from their respective member schools advance to the PIAA Track and Field Championships.

⁹ See WPIAL, <https://www.wpial.org/> (last accessed Aug. 23, 2021).

¹⁰ See District One, <https://www.piaad1.org/> (last accessed Aug. 23, 2021).

36. Student athletes qualify for the PIAA Track and Field Championships by placing eighth or better in the finals of their district championship meet, provided their time, height, or distance at the district championship meet equals or is better than certain qualifying standards that PIAA sets.¹¹

37. PIAA adjusts the qualifying standards by gender and school size such that every student competing in track and field can share in the common goal of qualifying for the PIAA Track and Field Championships—except for Para athletes.

38. PIAA does not allow Para athletes to participate in the annual PIAA Track and Field Championships and does not maintain qualifying standards for these athletes.

39. By failing to maintain a procedure through which Para athletes can qualify for and, upon qualification, compete in the PIAA Track and Field Championships, PIAA denies Alex, Trent, and other Para athletes the opportunity to:

- a. share in their teammates' goal of qualifying for "states";
- b. participate in the PIAA Track and Field Championships;
- c. earn points for their school, if it qualifies for the PIAA Track and Field Championships as a team;
- d. meet and compete against other Para athletes across Pennsylvania—athletes they cannot compete against during the regular season because they are geographically dispersed across PIAA's twelve districts;
- e. represent their schools and communities on a statewide level;

¹¹ 2021 PIAA Track & Field Championships, PIAA, https://www.piaa.org/assets/web/documents/2021_SQS_Qualifiers.pdf (last accessed Aug. 23, 2021).

f. showcase their athletic ability to college scouts and programs, like Penn State Ability Athletics Track and Field;¹²

g. earn athletic scholarships; and

h. gain the lifelong memories and other long-term benefits of participating in interscholastic sports.

40. As a result of being denied these opportunities, Alex and Trent cannot help feeling deterred from concentrating in and committing to track and field events, like the 100-meters, shot put, and discuss.

41. Instead, Alex and Trent are more likely to focus on other sports and activities, like sled hockey, tennis, or video games, that are unaffiliated with PIAA, their classmates, friends, coaches, mentors, and schools.

42. If PIAA maintained a procedure through which Alex and Trent could qualify for and, upon qualification, compete in the PIAA Track and Field Championships—like it does for the “able-bodied” athletes in Pennsylvania—Alex and Trent would not be so deterred, and would train even harder to earn the right to compete alongside their teammates at future PIAA Track and Field Championships.

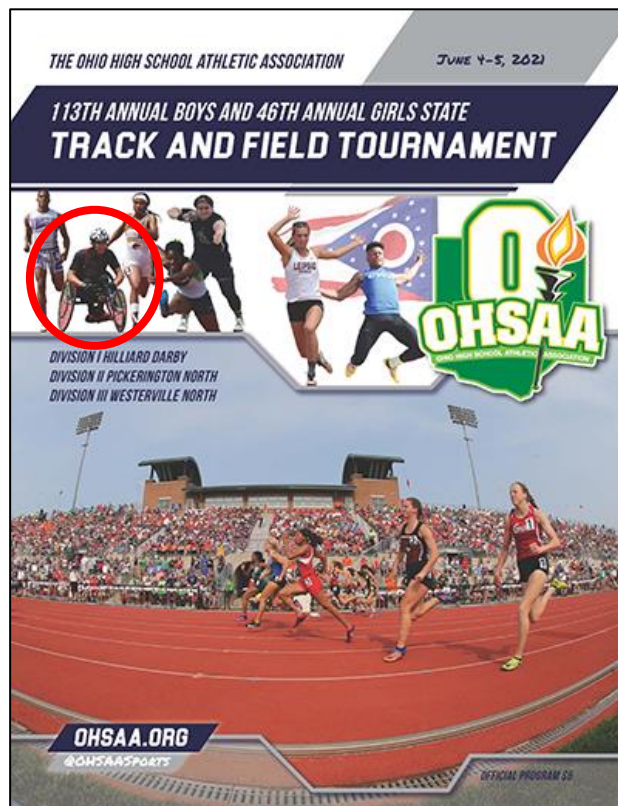
43. Still, despite the unequal opportunities available to Alex and Trent under PIAA’s current able-only policy, and the deterrent effect this unequal treatment has on their commitment to interscholastic track and field, generally, Alex and Trent intend to participate in track and field for their respective high school teams in 2022 because they enjoy their teammates, coaches, and being part of these high school sports communities.

¹² *Penn State Ability Athletics Track and Field*, Go PSU Sports, <https://gopsusports.com/sports/2018/8/8/ability-track-html.aspx> (last accessed Aug. 23, 2021).

44. Unlike Pennsylvania, many other states allow Para athletes to compete in their high school state championship meets.

45. For example, if Alex lived 30 miles east and attended high school in East Liverpool, Ohio, then he could have qualified for and competed in Ohio's annual track and field tournament, in which wheelchair athletes have competed since 2013.

46. Indeed, Alex's time of 23.57 seconds in the 100-meter dash at the WPIAL meet would have won him 10th place at the 2021 Ohio D1 State Track and Field Championships.¹³ His shot put of 11 feet 1 inch would have earned him 7th place.¹⁴



47. If Trent lived in California, he could have participated in the Ambulatory Para athlete divisions in shot put and discus at the 2019 State Championships.¹⁵

48. Unlike students in Ohio, California, and at least a dozen other states across the country,¹⁶ Alex and Trent will never have the chance to qualify for and, upon qualification,

¹³ *Boys 100 Meter Dash Seated Wheelchair – Preliminaries*, AthleticLive, <https://results.timingfirst.com/meets/10110/events/336394/results> (last accessed Aug. 23, 2021).

¹⁴ *Boys Shot Put Seated Wheelchair*, AthleticLive, <https://results.timingfirst.com/meets/10110/events/336331/results> (last accessed Aug. 23, 2021).

¹⁵ *2019 CIF State Championships – Results*, <http://www.rtspt.com/events/cif/2019/compiled.pdf> (last accessed Aug. 23, 2021).

¹⁶ *State High School Associations with Adaptive Sports Programming*, https://www.atfusa.org/HIGH_SCHOOL/Integrated%20State%20High%20School%20Athletic%20Programs_1.29.19.pdf (last accessed Aug. 23, 2021).

compete alongside their teammates at the PIAA Track and Field Championships unless PIAA modifies its current able-only rules, policies, and procedures before the 2022 season.

CLASS ALLEGATIONS

49. Alex brings this class action pursuant to Fed. R. Civ. P. 23(a) and 23(b)(2) on behalf of himself and the following statewide class:

Wheelchair Athlete Class: “All individuals with a permanent physical disability, who use a wheelchair to compete in track and field, and who have been, or in the future will be, denied a full and equal opportunity to qualify for and, upon qualification, compete in the PIAA Track and Field Championships because PIAA does not offer wheelchair divisions at the PIAA Track and Field Championships.”

50. Trent brings this class action pursuant to Fed. R. Civ. P. 23(a) and 23(b)(2) on behalf of himself and the following statewide class:

Ambulatory Para Athlete Class: “All individuals with a permanent physical disability who have been, or in the future will be, denied a full and equal opportunity to qualify for and, upon qualification, compete in the PIAA Track and Field Championships because PIAA does not offer para-ambulatory divisions at the PIAA Track and Field Championships.”

51. Numerosity: The classes described above are so numerous that joinder of all individual members in one action would be impracticable because, without limitation, the classes consist of numerous individuals who are geographically diverse and are unlikely to bring individual suits given their status as school students and/or minors. Disposition of the class members’ individual claims through this class action will benefit both the parties and Court, and will facilitate judicial economy.

52. Typicality: Plaintiffs’ claims are typical of the claims of the members of the classes because they arise from the same course of conduct engaged in by PIAA, are based on the same alleged violations of the same statutes and regulations, and seek the same relief.

53. Common Questions of Fact and Law: There is a well-defined community of interest and common questions of fact and law affecting members of the classes, including but not limited to: (a) whether the ADA or Section 504 requires PIAA to provide Para athletes the opportunity to qualify for and, upon qualification, compete in the PIAA Track and Field Championships; (b) if either the ADA or Section 504 requires PIAA to provide Para athletes the opportunity to qualify for the PIAA Track and Field Championships, do these statutes also require PIAA to allow Para athletes to score points for their teams at the PIAA Track and Field Championships; and (c) whether either accommodation would fundamentally alter the PIAA Track and Field Championships such that PIAA may continue excluding Para students from the PIAA Track and Field Championships.

54. Adequacy of Representation: Plaintiffs are adequate representatives of the classes they seek to represent because their interests do not conflict with the interests of the members of those classes. Plaintiffs will fairly, adequately, and vigorously represent and protect the interests of the members of the classes, and they have no interests antagonistic to the members of the classes. Plaintiffs have retained counsel who are competent and experienced in the prosecution of class action litigation, generally, and who possess specific expertise in the context of ADA litigation.

55. Class certification is appropriate under Fed. R. Civ. P. 23(b)(2) because PIAA has acted or refused to act on grounds generally applicable to the classes, making appropriate both declaratory and injunctive relief with respect to Plaintiffs and the classes as a whole.

FIRST CLAIM FOR RELIEF
Title II of the ADA, 42 U.S.C. § 12132, *et seq.*

56. The assertions contained in the previous paragraphs are incorporated by reference.

57. Title II of the ADA provides that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132.

58. Alex and Trent are each a “qualified individual with a disability” within the meaning of Title II because they are limited in the major life activities of walking, bending, lifting, and/or standing, and because they meet the essential eligibility requirements for participation in the programs and activities that PIAA provides. 42 U.S.C. § 12131(2).

59. PIAA is a “public entity” within the meaning of Title II because PIAA’s membership is comprised mostly of public schools and because it receives state and federal funding indirectly through PIAA member schools.¹⁷ 42 U.S.C. § 12131(1).

60. By failing to maintain a process through which Para athletes can qualify for and, upon qualification, compete in the PIAA Track and Field Championships, PIAA has excluded Alex and Trent from participating in Pennsylvania’s only high school state track and field championship, denied Alex and Trent the benefits of that opportunity, and otherwise subjected Alex and Trent to a policy that expressly disclaims any responsibility for Para athletes (*see, e.g.*, PIAA’s Policies limiting participation to “able-bodied athletes” (Ex. A) and Equal Opportunity Statement omitting student athletes with disabilities (Ex. B)).

61. In other words, PIAA has violated Title II of the ADA.

¹⁷ “Junior high/middle schools pay annual dues of \$250; senior high schools pay annual dues ranging from a low of \$475 to a high of \$625, based on school size.” *A Principals’ Organization, Principle-Based*, PIAA, <http://www.piaa.org/about/story.aspx> (last accessed Aug. 23, 2021).

62. PIAA's ongoing and continuing violations of Title II have caused, and in the absence of an injunction will continue to cause, harm to Alex, Trent, and the classes by barring this group of student athletes from future PIAA Track and Field Championships.

SECOND CLAIM FOR RELIEF
Title III of the ADA, 42 U.S.C. § 12181, *et seq.*

63. The assertions contained in the previous paragraphs are incorporated by reference.

64. Title III of the ADA generally provides that “[n]o 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.” 42 U.S.C. § 12182(a); 28 C.F.R. § 36.201(a).

65. More specifically, Title III makes it illegal for public accommodations to deny participation in an activity, or to afford an unequal degree of participation in an activity, to an individual or class on the basis of a disability. 42 U.S.C. § 12182(b)(1)(A).

66. PIAA is a “place of public accommodation” under Title III of the ADA because it owns, leases, and/or operates places of public accommodation; provides benefits and services for the public at and for places of public accommodation; provides and enforces rules, regulations, and standards that are in force at events conducted at or by places of public accommodation; and directs employees and independent contractors to administer benefits and services at places of public accommodation on PIAA's behalf.

67. By failing to maintain a process through which Para athletes can qualify for and, upon qualification, compete in the PIAA Track and Field Championships, PIAA has excluded Alex and Trent from participating in Pennsylvania's only high school state track and field championship, denied Alex and Trent the benefits of that opportunity, and otherwise denied Alex

and Trent full and equal enjoyment of PIAA's goods, services, and facilities (*see, e.g.*, PIAA's Policies limiting participation to "able-bodied athletes" (Ex. A) and Equal Opportunity Statement omitting student athletes with disabilities (Ex. B)).

68. In other words, PIAA has violated Title III of the ADA.

69. PIAA's ongoing and continuing violations of Title III have caused, and in the absence of an injunction will continue to cause, harm to Alex, Trent, and the classes by barring this group of student athletes from future PIAA Track and Field Championships.

THIRD CLAIM FOR RELIEF

Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, *et seq.*

70. The assertions contained in the previous paragraphs are incorporated by reference.

71. Section 504 provides, in pertinent part: "No otherwise qualified individual with a disability...shall, solely by reason of her or his 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...." 29 U.S.C. § 794(a).

72. Alex and Trent are each a "qualified individual with a disability" within the meaning of Section 504 because they are limited in the major life activities of walking, bending, lifting, and/or standing.

73. PIAA is a recipient of Federal financial assistance sufficient to invoke the coverage of Section 504, and has received such Federal financial assistance at all times relevant to the claims asserted in this Complaint.

74. PIAA received \$301,400.00 in Federal financial assistance from the Small Business Administration on April 9, 2020.¹⁸

¹⁸ *Loan Summary*, https://www.usaspending.gov/award/ASST_NON_9884407002_7300 (last accessed Aug. 23, 2021).

75. PIAA received another \$272,462.70 in Federal financial assistance from the Small Business Administration on April 29, 2021.¹⁹

76. “[T]he term ‘program or activity’ means all of the operations of...an entire corporation...if assistance is extended to such corporation[.]” 29 U.S.C. § 794(b)(3)(A)(i).

77. Because PIAA has received Federal financial assistance, all of its operations—including PIAA Track and Field Championships—constitute a “program or activity” within the meaning of the Rehabilitation Act.

78. The Office for Civil Rights Division of the United States Department of Education published a Dear Colleague letter in 2013 providing guidance relating to students with disabilities in extracurricular athletics. This letter provides that “the Department’s Section 504 regulations prohibit...providing a qualified student with a disability with...[a] service that is not as effective as that provided to others and does not afford that student with an equal opportunity to obtain the same result, gain the same benefit, or reach the same level of achievement in the most integrated setting appropriate to the student’s needs[.]”²⁰

79. By failing to maintain a process through which Para athletes can qualify for and, upon qualification, compete in the PIAA Track and Field Championships, PIAA has excluded Alex and Trent from participating in Pennsylvania’s only high school state track and field championship, denied Alex and Trent the opportunity to reach the same level of achievement as

¹⁹ *Loan Summary*, https://www.usaspending.gov/award/ASST_NON_4664048907_7300 (last accessed Aug. 23, 2021).

²⁰ See Ex. C, *Dear Colleague Letter: Students with Disabilities in Extracurricular Athletics* (January 25, 2013) from Seth M. Galanter, Acting Assistant Sec’y for Civil Rights, U.S. Dep’t of Educ., p. 4 (Jan. 25, 2013), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201301-504.html> (last accessed Aug. 23, 2021); see also Ex. D, *Dear Colleague Letter: Students with Disabilities in Extracurricular Athletics* (January 25, 2021): *Background and Fast Facts* (last modified Jan. 10, 2020), <https://www2.ed.gov/print/about/offices/list/ocr/docs/dcl-factsheet-201301-504.html> (last accessed Aug. 23, 2021).

a result of this exclusion, and otherwise subjected Alex and Trent to discrimination solely on the basis of their disability (*see, e.g.*, PIAA's Policies limiting participation to "able-bodied athletes" (Ex. A) and Equal Opportunity Statement omitting student athletes with disabilities (Ex. B)).

80. In other words, PIAA has violated Section 504 of the Rehabilitation Act.

81. PIAA's ongoing and continuing violations of Section 504 have caused, and in the absence of an injunction will continue to cause, harm to Alex, Trent, and the classes by barring this group of student athletes from future PIAA Track and Field Championships.

PRAYER FOR RELIEF

WHEREFORE, Alex Brown and Trent Clayton respectfully request relief as follows:

(A) An order certifying the proposed classes, appointing Plaintiffs as representatives of the proposed classes they seek to represent, and appointing undersigned counsel as counsel for the proposed classes;

(B) A declaration that PIAA's conduct as alleged violates Titles II and III of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and the regulations promulgated under those statutes;

(C) Issuance of a permanent injunction requiring PIAA to provide Para athletes a process to qualify for and, upon qualification, compete in the PIAA Track and Field Championships in 2022 and beyond;

(D) An award of reasonable attorney's fees and costs, as provided by law;

(E) Such other relief as the Court finds just and proper, including nominal damages;
and

(F) An Order retaining jurisdiction over this case until PIAA demonstrates its compliance with the Court's Orders.

DEMAND FOR JURY TRIAL

Plaintiffs request a jury trial.

Dated: August 24, 2021

/s/ Kevin W. Tucker

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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA**

ALEX BROWN and TRENT CLAYTON,
individually and on behalf of all others
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Plaintiffs,

v.

PENNSYLVANIA INTERSCHOLASTIC
ATHLETIC ASSOCIATION INC.,

Defendant.

Civil Action No. 2:21-cv-1119

EXHIBIT A TO PLAINTIFFS' CLASS ACTION COMPLAINT

**2021-2022 PIAA Policies and Procedures: Policy Regarding the Regular Season
Participation of Wheelchair Athletes in the Sport of Outdoor Track and Field**

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POLICY REGARDING THE REGULAR SEASON PARTICIPATION OF WHEELCHAIR ATHLETES IN THE SPORT OF OUTDOOR TRACK AND FIELD

Track and field events administered by PIAA are intended for participation by able-bodied athletes. To promote the participation of students with disabilities, accommodations may be made in specific sports for such persons under PIAA's policy relating to "Requests for Accommodations Due To Disabilities." In establishing categories of competition within a particular sport specifically for students with disabilities, however, PIAA recognizes that there exists a broad range of disabilities suffered by many students and that the disabilities have varying effects on the capabilities of the students to compete athletically. This range of disabilities makes it challenging to develop a comprehensive policy governing such competition. PIAA recognizes, for example, that Wheelchair Track and Field USA (WTFUSA) has established numerous classifications for Wheelchair Athletes based upon the levels of disabilities present. PIAA is simply not equipped to offer the broad range of interscholastic competitive opportunities which might be desired or preferred.

In an effort to expand competitive opportunities, however, the PIAA Board of Directors has adopted this policy to permit student athletes utilizing Wheelchairs to participate in some events against other Wheelchair Athletes in interscholastic outdoor track and field during the Regular Season and under the following conditions and procedures. Although Wheelchair Athletes may have a range of functionality, PIAA applies standards generally consistent with the T53D and F53D classifications for senior high school wheelchair athletes and the T53C and F53C classifications for junior high/middle school wheelchair athletes, as defined by WTFUSA, for Regular Season competition.

A. General Approach:

Where conditions do not present an unusual and cognizable increased risk of danger to the Wheelchair Athletes or other participants, and subject to any member school's verified presentation of facility-related prohibitions directly related to the use of Wheelchairs, Wheelchair Athletes who meet all other PIAA eligibility requirements may participate in events identified in this Policy alongside able-bodied competitors.

Wheelchair Athletes may participate in any combination of four (4) of the following events: 100 meter dash; 200 meter dash; 400 meter dash; 800 meter run; shot put; discus throw; and javelin throw.

For scoring purposes, Wheelchair Athletes compete only against a set standard and other Wheelchair Athletes. To a degree, the points earned by Wheelchair Athletes are included in the point totals for the Wheelchair Athlete's Team.

B. Definitions

1. Wheelchair Athlete: A Wheelchair Athlete is a student who has a permanent muscular or neuromuscular disability, which significantly limits the student's ability to move, or a permanent skeletal deformity or abnormality, which significantly affects ambulation, and requires the student to use a Wheelchair for everyday activities. Permanent orthopedic impairment shall be verified by a licensed physician of medicine or osteopathic medicine and maintained on permanent file at the Wheelchair Athlete's school.

2. Wheelchair: A device that meets the following specifications:

- A Wheelchair used for track events shall have at least two large wheels and one small one. The maximum diameter of the large wheels, including the inflated tire, shall not exceed 70 cm and the maximum diameter of the small wheel(s), including the inflated tire(s), shall not exceed 50 cm.
- A Wheelchair used for track events shall be operated manually, with no mechanical, electronic, or other gears or levers used to propel the Wheelchair.
- Only one hand rim shall be attached to each large wheel of the Wheelchair.

- A device used by the Wheelchair Athlete to sit in for field events, including a cushion, shall not exceed 25 inches in height. The device need not meet the specifications for a Wheelchair used for track events.

C. Scoring.

1. As set forth below, Wheelchair Athletes compete against other Wheelchair Athletes and against a standard time or distance for the opportunity to score points for their Team.

2. Senior high school wheelchair Athletes are eligible to score points for their Team only if they meet or exceed the following minimum standards ("Qualifying Standards") in the identified events:

	Boys	Girls
100 meter dash	:24	:30
200 meter dash	:42	:55
400 meter dash	1:30	1:55
800 meter run	2:50	3:20
shot put	8-2	6-6
discus throw	14-9	9-10
javelin throw	16-4	11-5

3. Junior high/middle school wheelchair athletes are eligible to score points for their junior high/middle school Team only if they meet or exceed the following minimum standards ("Qualifying Standards") in the identified events:

	Boys	Girls
100 meter dash	:27	:33
200 meter dash	:45	1:00
400 meter dash	1:40	2:00
800 meter run	3:30	3:30
shot put	6-6	4-11
discus throw	13-1	8-2
javelin throw	14-9	10-7

4. If the Wheelchair Athlete meets or exceeds the Qualifying Standards set forth above, the Wheelchair Athlete shall score at least 1 point in the event.

5. If more than one Wheelchair Athlete competes in an event, scoring for each Wheelchair Athlete who meets or exceeds the Qualifying Standard shall be as follows:

- 1 participant: 1 point
- 2 participants: 1st place, 2 points; 2nd place, 1 point
- 3 or more participants: 1st place, 5 points; 2nd place, 3 points; 3rd place, 1 point

A competitor who does not meet or exceed the Qualifying Standard shall not receive any points, regardless of the number of participants in the event.

A competitor who does meet or exceed the Qualifying Standard receives the full number of points based on the number of competitors, regardless of whether any or all of the other competitors meet or exceed the Qualifying Standard.

6. **Team Scoring:** If the points scored by a Wheelchair Athlete have no impact on the results of the competition between two or more Teams, the Wheelchair Athlete's points shall be added to that Team's point total.

If the points scored by a Wheelchair Athlete enable his or her Team to tie or exceed the point total of one or more Teams in the Contest, then the Contest will be preliminarily determined to be a tie between those Teams and those tied Teams will apply the following tie-breaker:

1. The Team with the fewest number of coaches, contestants, and other Team/school personnel disqualified from an event **and** from further competition **or** involvement in the meet for **unsporting conduct**, shall be declared the winner;
2. If the tie still remains, the Team with the fewest number of competitors disqualified from an event for **unacceptable conduct**, shall be declared the winner;
3. If the tie still remains, the Team with the greater number of **first place finishes**, shall be declared the winner*;
4. If the tie still remains, the Team with the greater number of **second place finishes**, shall be declared the winner*;
5. If the tie still remains, the Team with the greater number of **third place finishes**, shall be declared the winner*;
6. If the tie is broken after applying 1, 2, 3, 4, **or** 5, the Team declared the winner* shall have **one point and an asterisk (*) added to their score**; or

If the tie remains after applying 1, 2, 3, 4, **and** 5, **the meet shall be scored as a tie.**

*Wheelchair events shall be counted only if both Teams have an equal number of Wheelchair Athletes competing. If the participants are equal between Teams, then their events will be counted as well.

D. Miscellaneous.

1. Wheelchair Athletes shall compete in school-issued or school-approved uniforms.
2. All Wheelchair Athletes must wear ANSI certified helmets.
3. Progression of a Wheelchair by any method except the competitor pushing on the wheels or hand rims will result in disqualification of the competitor.
4. Qualifying Standards are based on national standards established by WTFUSA, the national governing body of Wheelchair Sports USA. That body has not developed qualifying standards for cinder track surfaces. Therefore, no Qualifying Standards exist and points may not be earned for participation on cinder track surfaces
5. For field events, the following size implements shall be used by Wheelchair Athletes:

	Boys	Girls
Shot put	3 kg	3 kg
Discus throw	1 kg	1 kg
Javelin throw	600 g	600 g

NOTE: The 1 kg discus and the 600 g javelin are the standard implements for able-bodied girls in their respective events. Therefore, each should be available at a Contest under normal conditions. As a 3 kg shot is required in both boys and girls competition, the Wheelchair Athletes competing in that event must ensure that a proper size shot is present.

PRACTICE INTERRUPTION AND TEMPORARY SCHOOL CLOSURES INCLUDING STRIKES

It is the philosophy of the PIAA Board of Directors, and PIAA member schools, that interscholastic athletics should not be used as a pawn during contract negotiations between School Boards and Education Associations.

While interscholastic athletics should not be considered to be different than any other extra-curricular activities, it is a simple fact of life that interscholastic athletics fan the emotions of a community to a higher and greater degree than any other school function.

Pursuant to ARTICLE XII, ATHLETIC RELATIONS, Section 6, Temporary Closure of School, of the PIAA By-Laws, there are several options that may be exercised during the period in which a member school is affected by a professional labor dispute:

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA**

ALEX BROWN and TRENT CLAYTON,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

PENNSYLVANIA INTERSCHOLASTIC
ATHLETIC ASSOCIATION INC.,

Defendant.

Civil Action No. 2:21-cv-1119

EXHIBIT B TO PLAINTIFFS' CLASS ACTION COMPLAINT

2021-2022 PIAA Constitution and By-Laws: Equal Opportunity Statement

2021-2022 PIAA CONSTITUTION and BY-LAWS

CONSTITUTION AND BY-LAWS

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CONSTITUTION

EQUAL OPPORTUNITY STATEMENT

The Pennsylvania Interscholastic Athletic Association, Inc. (PIAA) believes that all boys and girls should have equal opportunity to participate in all levels of interscholastic athletics regardless of race, color, sex, creed, religion or ethnic background.

ADHERENCE TO AND ENFORCEMENT OF PIAA CONSTITUTION

The initial responsibility for adherence to and enforcement of the PIAA Constitution by a PIAA member school, its students and its personnel rests with the Principal of that school. Notwithstanding this initial responsibility for compliance, (1) the Principal of any PIAA member school, by written request or complaint to the Chairman of the appropriate District Committee or PIAA Office, may allege or bring to the attention of PIAA a violation of, or a failure to meet, applicable provisions of the PIAA Constitution by any person and/or member school, and (2) a District Committee or the Board of Directors may, on its own motion, enforce the PIAA Constitution in the absence of submission of the matter to it by the Principal of a PIAA member school.

This portion of the Handbook contains the PIAA Constitution, as in effect July 1, 2020. Any subsequent amendments for 2020-2021 will appear on the PIAA Web site at www.piaa.org.

ARTICLE I NAME

The name of this Association is the Pennsylvania Interscholastic Athletic Association, Inc. (herein sometimes referred to as PIAA).

ARTICLE II PURPOSES

Section 1. Charitable Purposes.

The purposes of PIAA are:

A. To promote and support the educational values of interscholastic athletics and the high ideals of good sportsmanship.

B. To promote, establish and enforce uniform standards in interscholastic athletic competition among member schools.

C. To promote and support safe and healthy interscholastic athletic competition.

Section 2. No Inurement.

In carrying out its purposes, PIAA does not contemplate pecuniary gain or profit, incidental or otherwise. PIAA is incorporated exclusively for, and the nature of the activities to be conducted and the purposes to be promoted by PIAA exclusively is for, charitable and educational purposes within the purview of Section 501(c)(3) of the Internal Revenue Code of 1986 ("Code"). In fulfilling said purposes, PIAA may engage in any lawful activity which may be conducted on a not-for-profit basis by a Section 501(c)(3) organization.

No part of the net earnings of PIAA shall inure to the benefit of or be distributable to its directors, officers, or other private persons, except that PIAA is authorized and empowered to pay reasonable compensation for services actually rendered and to make payments and distributions in furtherance of the purposes and objects set forth herein. No substantial part of the activities of PIAA shall be the carrying on of propaganda or otherwise attempting to influence legislation and PIAA may not participate or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office. Notwithstanding any other provision of this Constitution, PIAA shall not conduct or carry on any activities not permitted to be conducted or carried on by an organization exempt under Section 501(c)(3) of the Code, or corresponding provisions of any subsequent federal tax laws, or by an organization, contributions to which are deductible under Section 170(c)(2) of the Code or corresponding provisions of any subsequent federal tax laws.

ARTICLE III MEMBERSHIP

Section 1. Members.

All public high schools, intermediate schools, junior high schools, and middle school which are accredited by the Pennsylvania Department of Education (PDE), and all Charter Schools and Private Schools within Pennsylvania, meeting PIAA's membership requirements, are eligible for membership in PIAA.

PIAA member schools must sponsor at least one Team. The membership of a member school which ceases to sponsor at least one Team shall terminate automatically at the conclusion of the then-current membership year, unless the school is a party to a valid contract under the Cooperative Sponsorship of a Sport Program, in which case its membership shall terminate with termination of that agreement.

INTERPRETATIONS

Section 1. December 29, 1964.

PIAA will admit to membership intermediate high schools, subject to the dues schedule of senior high schools, unless they are defined by PDE as junior high schools. Eligibility of students in such schools will be determined by the District Committee based on local situations.

Section 1. May 23, 1952.

PIAA recognizes as separate high schools those schools recognized as separate high schools by PDE.

Section 2. Application for Membership.

Application for membership in PIAA shall be made by submitting a PIAA Application for School Membership to the District Committee of the PIAA District in which the school is geographically located. Each PIAA Application for School Membership must be signed by the Principal and must be accompanied by the annual dues and a resolution of approval executed by the School Board or the Board having jurisdiction over the applicant school. The resolution must state that, in all matters pertaining to interscholastic athletic activities, the school shall be governed by the Constitution, By-Laws, Policies and Procedures, and Rules and Regulations of PIAA. Applications for membership in PIAA shall be approved by the applicable District Committee and by the PIAA Board of Directors if the criteria set forth in Sections 1 and 2 of this ARTICLE are met.

Section 3. When Membership Becomes Effective.

Membership in PIAA becomes effective the next following July 1st after the school's application is approved by the PIAA Board of Directors.

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA**

ALEX BROWN and TRENT CLAYTON,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

PENNSYLVANIA INTERSCHOLASTIC
ATHLETIC ASSOCIATION INC.,

Defendant.

Civil Action No. 2:21-cv-1119

EXHIBIT C TO PLAINTIFFS' CLASS ACTION COMPLAINT

Dear Colleague Letter: Students with Disabilities in Extracurricular Athletics (January 25, 2013) from Seth M. Galanter, Acting Assistant Sec'y for Civil Rights, U.S. Dep't of Educ.



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

January 25, 2013

Dear Colleague:

Extracurricular athletics—which include club, intramural, or interscholastic (*e.g.*, freshman, junior varsity, varsity) athletics at all education levels—are an important component of an overall education program. The United States Government Accountability Office (GAO) published a report that underscored that access to, and participation in, extracurricular athletic opportunities provide important health and social benefits to all students, particularly those with disabilities.¹ These benefits can include socialization, improved teamwork and leadership skills, and fitness. Unfortunately, the GAO found that students with disabilities are not being afforded an equal opportunity to participate in extracurricular athletics in public elementary and secondary schools.²

To ensure that students with disabilities consistently have opportunities to participate in extracurricular athletics equal to those of other students, the GAO recommended that the United States Department of Education (Department) clarify and communicate schools' responsibilities under Section 504 of the Rehabilitation Act of 1973 (Section 504) regarding the provision of extracurricular athletics. The Department's Office for Civil Rights (OCR) is responsible for enforcing Section 504, which is a Federal law

¹ United States Government Accountability Office, *Students with Disabilities: More Information and Guidance Could Improve Opportunities in Physical Education and Athletics*, No. GAO-10-519, at 1, 31 (June 2010), available at <http://www.gao.gov/assets/310/305770.pdf>.

² *Id.* at 20-22, 25-26.

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The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

[OCR-00064]

Page 2—Students with disabilities in extracurricular athletics

designed to protect the rights of individuals with disabilities in programs and activities (including traditional public schools and charter schools) that receive Federal financial assistance.³

In response to the GAO’s recommendation, this guidance provides an overview of the obligations of public elementary and secondary schools under Section 504 and the Department’s Section 504 regulations, cautions against making decisions based on presumptions and stereotypes, details the specific Section 504 regulations that require students with disabilities to have an equal opportunity for participation in nonacademic and extracurricular services and activities, and discusses the provision of separate or different athletic opportunities. The specific details of the illustrative examples offered in this guidance are focused on the elementary and secondary school context. Nonetheless, students with disabilities at the postsecondary level must also be provided an equal opportunity to participate in athletics, including intercollegiate, club, and intramural athletics.⁴

³ 29 U.S.C. § 794(a), (b). Pursuant to a delegation by the Attorney General of the United States, OCR shares in the enforcement of Title II of the Americans with Disabilities Act of 1990, which is a Federal law prohibiting disability discrimination in the services, programs, and activities of state and local governments (including public school districts), regardless of whether they receive Federal financial assistance. 42 U.S.C. § 12132. Violations of Section 504 that result from school districts’ failure to meet the obligations identified in this letter also constitute violations of Title II. 42 U.S.C. § 12201(a). To the extent that Title II provides greater protection than Section 504, covered entities must comply with Title II’s substantive requirements.

OCR also enforces Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in education programs that receive Federal financial assistance. 20 U.S.C. § 1681. For more information about the application of Title IX in athletics, see OCR’s “Reading Room,” “Documents – Title IX,” at <http://www.ed.gov/ocr/publications.html#TitleIX-Docs>.

⁴ 34 C.F.R. §§ 104.4, 104.47. The U.S. Department of Education has determined that this document is a “significant guidance document” under the Office of Management and Budget’s Final Bulletin for Agency Good Guidance Practices, 72 Fed. Reg. 3432 (Jan. 25, 2007). OCR issues this and other policy guidance to provide recipients with information to assist them in meeting their obligations, and to provide members of the public with information about their rights under the civil rights laws and implementing regulations that we enforce. OCR’s legal authority is based on those laws and regulations. This letter does not add requirements to applicable law, but provides information and examples to inform recipients about how OCR evaluates whether covered entities are complying with their legal obligations. If you are interested in commenting on this guidance, please send an e-mail with your comments to OCR@ed.gov, or write to us at the following address: Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, DC 20202.

I. Overview of Section 504 Requirements

To better understand the obligations of school districts with respect to extracurricular athletics for students with disabilities, it is helpful to review Section 504’s requirements.

Under the Department’s Section 504 regulations, a school district is required to provide a qualified student with a disability an opportunity to benefit from the school district’s program equal to that of students without disabilities. For purposes of Section 504, a person with a disability is one who (1) has a physical or mental impairment that substantially limits one or more major life activities; (2) has a record of such an impairment; or (3) is regarded as having such an impairment.⁵ With respect to public elementary and secondary educational services, “qualified” means a person (i) of an age during which persons without disabilities are provided such services, (ii) of any age during which it is mandatory under state law to provide such services to persons with disabilities, or (iii) to whom a state is required to provide a free appropriate public education under the Individuals with Disabilities Education Act (IDEA).⁶

Of course, simply because a student is a “qualified” student with a disability does not mean that the student must be allowed to participate in any selective or competitive program offered by a school district; school districts may require a level of skill or ability of a student in order for that student to participate in a selective or competitive program or activity, so long as the selection or competition criteria are not discriminatory.

Among other things, the Department’s Section 504 regulations prohibit school districts from:

- denying a qualified student with a disability the opportunity to participate in or benefit from an aid, benefit, or service;
- affording a qualified student with a disability an opportunity to participate in or benefit from an aid, benefit, or service that is not equal to that afforded others;

⁵ 29 U.S.C. § 705(9)(B), (20)(B) (as amended by the Americans with Disabilities Act Amendments Act of 2008); 34 C.F.R. § 104.3(j). For additional information on the broadened meaning of disability after the effective date of the 2008 Amendments Act, see OCR’s 2012 Dear Colleague Letter and Frequently Asked Questions document, available at <http://www.ed.gov/ocr/letters/colleague-201109.html>, and <http://www.ed.gov/ocr/docs/dcl-504faq-201109.html>.

⁶ 34 C.F.R. § 104.3(l)(2).

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- providing a qualified student with a disability with an aid, benefit, or service that is not as effective as that provided to others and does not afford that student with an equal opportunity to obtain the same result, gain the same benefit, or reach the same level of achievement in the most integrated setting appropriate to the student's needs;
- providing different or separate aid, benefits, or services to students with disabilities or to any class of students with disabilities unless such action is necessary to provide a qualified student with a disability with aid, benefits, or services that are as effective as those provided to others; and
- otherwise limiting a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.⁷

The Department's Section 504 regulations also require school districts to provide a free appropriate public education (Section 504 FAPE) to each qualified person with a disability who is in the school district's jurisdiction, regardless of the nature or severity of the person's disability.⁸

⁷ 34 C.F.R. § 104.4(b)(1)(i)-(iv), (vii), (2), (3). Among the many specific applications of these general requirements, Section 504 prohibits harassment on the basis of disability, including harassment that occurs during extracurricular athletic activities. OCR issued a Dear Colleague letter dated October 26, 2010, that addresses harassment, including disability harassment, in educational settings. See Dear Colleague Letter: Harassment and Bullying, available at <http://www.ed.gov/ocr/letters/colleague-201010.html>. For additional information on disability-based harassment, see OCR's Dear Colleague Letter: Prohibited Disability Harassment (July 25, 2000), available at <http://www.ed.gov/ocr/docs/disabharassltr.html>.

⁸ 34 C.F.R. § 104.33(a). Section 504 FAPE may include services a student requires in order to ensure that he or she has an equal opportunity to participate in extracurricular and other nonacademic activities. One way to meet the Section 504 FAPE obligation is to implement an individualized education program (IEP) developed in accordance with the IDEA. 34 C.F.R. § 104.33(b)(2). Because the IDEA is not enforced by OCR, this document is not intended as an explanation of IDEA requirements or implementing regulations, which include the requirement that a student's IEP address the special education, related services, supplementary aids and services, program modifications, and supports for school personnel to be provided to enable the student to, among other things, participate in extracurricular and other nonacademic activities. 34 C.F.R. § 300.320(a)(4)(ii). In general, OCR would view a school district's failure to address participation or requests for participation in extracurricular athletics for a qualified student with a disability with an IEP in a manner consistent with IDEA requirements as a failure to ensure Section 504 FAPE and an equal opportunity for participation.

Page 5—Students with disabilities in extracurricular athletics

A school district must also adopt grievance procedures that incorporate appropriate due process standards and that provide for prompt and equitable resolution of complaints alleging violations of the Section 504 regulations.⁹

A school district's legal obligation to comply with Section 504 and the Department's regulations supersedes any rule of any association, organization, club, or league that would render a student ineligible to participate, or limit the eligibility of a student to participate, in any aid, benefit, or service on the basis of disability.¹⁰ Indeed, it would violate a school district's obligations under Section 504 to provide significant assistance to any association, organization, club, league, or other third party that discriminates on the basis of disability in providing any aid, benefit, or service to the school district's students.¹¹ To avoid violating their Section 504 obligations in the context of extracurricular athletics, school districts should work with their athletic associations to ensure that students with disabilities are not denied an equal opportunity to participate in interscholastic athletics.¹²

II. **Do Not Act On Generalizations and Stereotypes**

A school district may not operate its program or activity on the basis of generalizations, assumptions, prejudices, or stereotypes about disability generally, or specific disabilities in particular. A school district also may not rely on generalizations about what students with a type of disability are capable of—one student with a certain type of disability may not be able to play a certain type of sport, but another student with the same disability may be able to play that sport.

Example 1: A student has a learning disability and is a person with a disability as defined by Section 504. While in middle school, this student enjoyed participating in her school's lacrosse club. As she enters the ninth grade in high school, she tries out and is

⁹ 34 C.F.R. § 104.7(b).

¹⁰ 34 C.F.R. § 104.10(a), 34 C.F.R. § 104.4(b)(1).

¹¹ 34 C.F.R. § 104.4(b)(1)(v); 34 C.F.R. pt. 104, App. A § 104.4 at 367 (2012).

¹² OCR would find that an interscholastic athletic association is subject to Section 504 if it receives Federal financial assistance or its members are recipients of Federal financial assistance who have ceded to the association controlling authority over portions of their athletic program. *Cf. Cmty. for Equity v. Mich. High Sch. Athletic Ass'n, Inc.*, 80 F.Supp.2d 729, 733-35 (W.D. Mich. 2000) (at urging of the United States, court finding that an entity with controlling authority over a program or activity receiving Federal financial assistance is subject to Title IX's anti-discrimination rule). Where an athletic association is covered by Section 504, OCR would find that the school district's obligations set out in this letter would apply with equal force to the covered athletic association.

Page 6—Students with disabilities in extracurricular athletics

selected as a member of the high school's lacrosse team. The coach is aware of this student's learning disability and believes that all students with the student's particular learning disability would be unable to play successfully under the time constraints and pressures of an actual game. Based on this assumption, the coach decides never to play this student during games. In his opinion, participating fully in all the team practice sessions is good enough.

Analysis: OCR would find that the coach's decision violates Section 504. The coach denied this student an equal opportunity to participate on the team by relying solely on characteristics he believed to be associated with her disability. A school district, including its athletic staff, must not operate on generalizations or assumptions about disability or how a particular disability limits any particular student. Rather, the coach should have permitted this student an equal opportunity to participate in this athletic activity, which includes the opportunity to participate in the games as well as the practices. The student, of course, does not have a right to participate in the games; but the coach's decision on whether the student gets to participate in games must be based on the same criteria the coach uses for all other players (such as performance reflected during practice sessions).

III. *Ensure Equal Opportunity for Participation*

A school district that offers extracurricular athletics must do so in such manner as is necessary to afford qualified students with disabilities an equal opportunity for participation.¹³ This means making reasonable modifications and providing those aids and services that are necessary to ensure an equal opportunity to participate, unless the school district can show that doing so would be a fundamental alteration to its program.¹⁴ Of course, a school district may adopt bona fide safety standards needed to implement its extracurricular athletic program or activity. A school district, however, must consider whether safe participation by any particular student with a disability can be assured through reasonable modifications or the provision of aids and services.¹⁵

¹³ 34 C.F.R. § 104.37(a), (c).

¹⁴ See *Alexander v. Choate*, 469 U.S. 287, 300-01 (1985) (Section 504 may require reasonable modifications to a program or benefit to assure meaningful access to qualified persons with disabilities); *Southeastern Cmty. Coll. v. Davis*, 442 U.S. 397 (1979) (Section 504 does not prohibit a college from excluding a person with a serious hearing impairment as not qualified where accommodating the impairment would require a fundamental alteration in the college's program).

¹⁵ 34 C.F.R. § 104.4(b)(1).

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Schools may require a level of skill or ability for participation in a competitive program or activity; equal opportunity does not mean, for example, that every student with a disability is guaranteed a spot on an athletic team for which other students must try out. A school district must, however, afford qualified students with disabilities an equal opportunity for participation in extracurricular athletics in an integrated manner to the maximum extent appropriate to the needs of the student.¹⁶ This means that a school district must make reasonable modifications to its policies, practices, or procedures whenever such modifications are necessary to ensure equal opportunity, unless the school district can demonstrate that the requested modification would constitute a fundamental alteration of the nature of the extracurricular athletic activity.

In considering whether a reasonable modification is legally required, the school district must first engage in an individualized inquiry to determine whether the modification is necessary. If the modification is necessary, the school district must allow it unless doing so would result in a fundamental alteration of the nature of the extracurricular athletic activity. A modification might constitute a fundamental alteration if it alters such an essential aspect of the activity or game that it would be unacceptable even if it affected all competitors equally (such as adding an extra base in baseball). Alternatively, a change that has only a peripheral impact on the activity or game itself might nevertheless give a particular player with a disability an unfair advantage over others and, for that reason, fundamentally alter the character of the competition. Even if a specific modification would constitute a fundamental alteration, the school district would still be required to determine if other modifications might be available that would permit the student's participation.

¹⁶ 34 C.F.R. § 104.37(a), (c); 34 C.F.R. § 104.34(b); 34 C.F.R. § 104.4(b)(1)(ii).

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To comply with its obligations under Section 504, a school district must also provide a qualified student with a disability with needed aids and services, if the failure to do so would deny that student an equal opportunity for participation in extracurricular activities in an integrated manner to the maximum extent appropriate to the needs of the student.¹⁷

Example 2: A high school student has a disability as defined by Section 504 due to a hearing impairment. The student is interested in running track for the school team. He is especially interested in the sprinting events such as the 100 and 200 meter dashes. At the tryouts for the track team, the start of each race was signaled by the coach's assistant using a visual cue, and the student's speed was fast enough to qualify him for the team in those events. After the student makes the team, the coach also signals the start of races during practice with the same visual cue. Before the first scheduled meet, the student asks the district that a visual cue be used at the meet simultaneously when the starter pistol sounds to alert him to the start of the race. Two neighboring districts use a visual cue as an alternative start in their track and field meets. Those districts report that their runners easily adjusted to the visual cue and did not complain about being distracted by the use of the visual cue.

After conducting an individualized inquiry and determining that the modification is necessary for the student to compete at meets, the district nevertheless refuses the student's request because the district is concerned that the use of a visual cue may distract other runners and trigger complaints once the track season begins. The coach tells the student that although he may practice with the team, he will not be allowed to participate in meets.

¹⁷ 34 C.F.R. § 104.37(a), (c); 34 C.F.R. § 104.34(b); 34 C.F.R. § 104.4(b)(1)(ii). Although a school district may also raise the defense that a needed modification or aid or service would constitute an undue burden to its program, based on OCR's experience, such a defense would rarely, if ever, prevail in the context of extracurricular athletics; for this reason, to the extent the examples in this letter touch on applicable defenses, the discussion focuses on the fundamental alteration defense. To be clear, however, neither the fundamental alteration nor undue burden defense is available in the context of a school district's obligation to provide a FAPE under the IDEA or Section 504. See 20 U.S.C. § 1414(d)(1); 34 C.F.R. § 104.33. Moreover, whenever the IDEA would impose a duty to provide aids and services needed for participation in extracurricular athletics (as discussed in footnote 8 above), OCR would likewise rarely, if ever, find that providing the same needed aids and services for extracurricular athletics constitutes a fundamental alteration under Section 504 for students not eligible under the IDEA.

Page 9—Students with disabilities in extracurricular athletics

Analysis: OCR would find that the school district’s decision violates Section 504.

While a school district is entitled to set its requirements as to skill, ability, and other benchmarks, it must provide a reasonable modification if necessary, unless doing so would fundamentally alter the nature of the activity. Here, the student met the benchmark requirements as to speed and skill in the 100 and 200 meter dashes to make the team. Once the school district determined that the requested modification was necessary, the school district was then obligated to provide the visual cue unless it determined that providing it would constitute a fundamental alteration of the activity.

In this example, OCR would find that the evidence demonstrated that the use of a visual cue does not alter an essential aspect of the activity or give this student an unfair advantage over others. The school district should have permitted the use of a visual cue and allowed the student to compete.

Example 3: A high school student was born with only one hand and is a student with a disability as defined by Section 504. This student would like to participate on the school’s swim team. The requirements for joining the swim team include having a certain level of swimming ability and being able to compete at meets. The student has the required swimming ability and wishes to compete. She asks the school district to waive the “two-hand touch” finish it requires of all swimmers in swim meets, and to permit her to finish with a “one-hand touch.” The school district refuses the request because it determines that permitting the student to finish with a “one-hand touch” would give the student an unfair advantage over the other swimmers.

Analysis: A school district must conduct an individualized assessment to determine whether the requested modification is necessary for the student’s participation, and must determine whether permitting it would fundamentally alter the nature of the activity. Here, modification of the two-hand touch is necessary for the student to participate. In determining whether making the necessary modification – eliminating the two-hand touch rule – would fundamentally alter the nature of the swim competition, the school district must evaluate whether the requested modification alters an essential aspect of the activity or would give this student an unfair advantage over other swimmers.

OCR would find a one-hand touch does not alter an essential aspect of the activity. If, however, the evidence demonstrated that the school district's judgment was correct that she would gain an unfair advantage over others who are judged on the touching of both hands, then a complete waiver of the rule would constitute a fundamental alteration and not be required.

In such circumstances, the school district would still be required to determine if other modifications were available that would permit her participation. In this situation, for example, the school district might determine that it would not constitute an unfair advantage over other swimmers to judge the student to have finished when she touched the wall with one hand and her other arm was simultaneously stretched forward. If so, the school district should have permitted this modification of this rule and allowed the student to compete.

Example 4: An elementary school student with diabetes is determined not eligible for services under the IDEA. Under the school district's Section 504 procedures, however, he is determined to have a disability. In order to participate in the regular classroom setting, the student is provided services under Section 504 that include assistance with glucose testing and insulin administration from trained school personnel. Later in the year, this student wants to join the school-sponsored gymnastics club that meets after school. The only eligibility requirement is that all gymnastics club members must attend that school. When the parent asks the school to provide the glucose testing and insulin administration that the student needs to participate in the gymnastics club, school personnel agree that it is necessary but respond that they are not required to provide him with such assistance because gymnastics club is an extracurricular activity.

Analysis: OCR would find that the school's decision violates Section 504. The student needs assistance in glucose testing and insulin administration in order to participate in activities during and after school. To meet the requirements of Section 504 FAPE, the school district must provide this needed assistance during the school day.

In addition, the school district must provide this assistance after school under Section 504 so that the student can participate in the gymnastics club, unless doing so would be a fundamental alteration of the district's education program. Because the school district always has a legal obligation under IDEA to provide aids or services in its education program to enable any IDEA-eligible students to participate in extracurricular

activities,¹⁸ providing these aids or services after school to a student with a disability not eligible under the IDEA would rarely, if ever, be a fundamental alteration of its education program. This remains true even if there are currently no IDEA-eligible students in the district who need these aids or services.

In this example, OCR would find that the school district must provide glucose testing and insulin administration for this student during the gymnastics club in order to comply with its Section 504 obligations. The student needs this assistance in order to participate in the gymnastics club, and because this assistance is available under the IDEA for extracurricular activities, providing this assistance to this student would not constitute a fundamental alteration of the district's education program.¹⁹

IV. Offering Separate or Different Athletic Opportunities

As stated above, in providing or arranging for the provision of extracurricular athletics, a school district must ensure that a student with a disability participates with students without disabilities to the maximum extent appropriate to the needs of that student with a disability.²⁰ The provision of *unnecessarily* separate or different services is discriminatory.²¹ OCR thus encourages school districts to work with their community and athletic associations to develop broad opportunities to include students with disabilities in all extracurricular athletic activities.

Students with disabilities who cannot participate in the school district's existing extracurricular athletics program – even with reasonable modifications or aids and services – should still have an equal opportunity to receive the benefits of extracurricular athletics. When the interests and abilities of some students with disabilities cannot be as fully and effectively met by the school district's existing extracurricular athletic program, the school district should create additional opportunities for those students with disabilities.

¹⁸ 20 U.S.C. §§ 1412(a)(1), 1414(d)(1)(A)(i)(IV)(bb); 34 CFR §§ 300.320(a)(4)(ii), 300.107, 300.117; *see also* footnotes 8 & 17, above.

¹⁹ 34 C.F.R. § 104.37.

²⁰ 34 C.F.R. § 104.34(b).

²¹ 34 C.F.R. pt. 104, App. A § 104.4 at 367 (2012); 34 C.F.R. pt. 104, App. A § 104.37 at 376 (2012).

In those circumstances, a school district should offer students with disabilities opportunities for athletic activities that are separate or different from those offered to students without disabilities. These athletic opportunities provided by school districts should be supported equally, as with a school district's other athletic activities. School districts must be flexible as they develop programs that consider the unmet interests of students with disabilities. For example, an ever-increasing number of school districts across the country are creating disability-specific teams for sports such as wheelchair tennis or wheelchair basketball. When the number of students with disabilities at an individual school is insufficient to field a team, school districts can also: (1) develop district-wide or regional teams for students with disabilities as opposed to a school-based team in order to provide competitive experiences; (2) mix male and female students with disabilities on teams together; or (3) offer "allied" or "unified" sports teams on which students with disabilities participate with students without disabilities.²² OCR urges school districts, in coordination with students, families, community and advocacy organizations, athletic associations, and other interested parties, to support these and other creative ways to expand such opportunities for students with disabilities.²³

V. Conclusion

OCR is committed to working with schools, students, families, community and advocacy organizations, athletic associations, and other interested parties to ensure that students with disabilities are provided an equal opportunity to participate in extracurricular athletics. Individuals who believe they have been subjected to discrimination may also file a complaint with OCR or in court.²⁴

²² The Department's Office of Special Education and Rehabilitative Services issued a guidance document that, among other things, includes suggestions on ways to increase opportunities for children with disabilities to participate in physical education and athletic activities. That guidance, *Creating Equal Opportunities for Children and Youth with Disabilities to Participate in Physical Education and Extracurricular Athletics*, dated August 2011, is available at <http://www2.ed.gov/policy/speced/guid/idea/equal-pe.pdf>.

²³ It bears repeating, however, that a qualified student with a disability who would be able to participate in the school district's existing extracurricular athletics program, with or without reasonable modifications or the provision of aids and services that would not fundamentally alter the program, may neither be denied that opportunity nor be limited to opportunities to participate in athletic activities that are separate or different. 34 C.F.R. § 104.37(c)(2).

²⁴ 34 C.F.R. § 104.61 (incorporating 34 C.F.R. § 100.7(b)); *Barnes v. Gorman*, 536 U.S. 181, 185 (2002).

Page 13—Students with disabilities in extracurricular athletics

For the OCR regional office serving your area, please visit:

<http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm>, or call OCR's Customer Service Team at 1-800-421-3481 (TDD 1-877-521-2172).

Please do not hesitate to contact us if we can provide assistance in your efforts to address this issue or if you have other civil rights concerns. I look forward to continuing our work together to ensure that students with disabilities receive an equal opportunity to participate in a school district's education program.

Sincerely,

/s/

Seth M. Galanter
Acting Assistant Secretary for Civil Rights

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA**

ALEX BROWN and TRENT CLAYTON,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

PENNSYLVANIA INTERSCHOLASTIC
ATHLETIC ASSOCIATION INC.,

Defendant.

Civil Action No. 2:21-cv-1119

EXHIBIT D TO PLAINTIFFS' CLASS ACTION COMPLAINT

**Dear Colleague Letter: Students with Disabilities in Extracurricular Athletics (January 25,
2013): Background and Fast Facts**

U.S. Department of Education

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Fact Sheet

Dear Colleague Letter: Students with Disabilities in Extracurricular Athletics (January 25, 2013)

Background and Fast Facts

 PDF (</about/offices/list/ocr/docs/dcl-factsheet-201301-504.pdf>) (245K)

Background

On January 25, 2013, the Office for Civil Rights (OCR) released a Dear Colleague Letter (“Guidance”) clarifying the existing obligations of school districts to provide students with disabilities an equal opportunity to participate in extracurricular athletics. You can find the Guidance at <http://www.ed.gov/ocr/letters/colleague-201301-504.pdf> (<http://www.ed.gov/ocr/letters/colleague-201301-504.pdf>).

Why did ED Issue the Guidance?

The Guidance, based on a long-standing disability law, Section 504 of the Rehabilitation Act of 1973 (Section 504), and the Department’s implementing regulation, was issued at the recommendation of the U.S. Government Accountability Office (GAO). A June 2010 GAO report found that students with disabilities participated in athletics at consistently lower rates than students without disabilities, and that schools lacked guidance on their responsibilities. That GAO report can be found at <http://www.gao.gov/assets/310/305770.pdf> (<http://www.gao.gov/assets/310/305770.pdf>).

What does the Guidance say?

The Guidance says that students with disabilities have the right, under Section 504, to an equal opportunity to participate in their schools' extracurricular activities. Ensuring that students with disabilities are given the opportunity to play alongside their peers—both with and without disabilities—is at the heart of the Guidance.

Does the Guidance Create New Legal Requirements?

No, the Guidance does not add new legal requirements. It explains existing legal requirements and provides examples to inform school districts and other covered entities about how OCR evaluates whether they are complying with their legal obligations. ED’s Section 504 regulation was issued in 1977 and has always applied to extracurricular activities, including athletic activities. 34 C.F.R. § 104.37. This regulatory provision is discussed in pages 6-12 of the Guidance.

Does the Guidance Only Apply to Elementary and Secondary Schools?

Although the Guidance addresses K-12 activities, the main principles of inclusion and equal access it embodies apply to postsecondary schools as well. Generally, the Guidance also applies to interscholastic athletic associations.

What Does the Guidance Say That School Districts Must Do?

A school district must provide students with disabilities an equal opportunity to participate in its existing extracurricular athletic programs. This means that a school district must not exclude students based on stereotypes and assumptions. It also means that a school district must make an individualized inquiry to determine if there are reasonable modifications, or necessary aids and services, which would allow a student with a disability the chance to take part in the activity. Examples could include:

- Using a light along with a starter pistol so that a deaf runner can compete; or
- Providing for, or assisting with, the administration of needed medicine like insulin so that a student with diabetes can take part in an after-school gymnastics club.

Must School Districts Change Essential Elements of an Athletic Activity to Meet these Obligations?

No. The requirement to provide an equal opportunity does NOT mean:

- Changing essential elements that affect the fundamental nature of the game;
- Giving a student with a disability an unfair advantage over other competitors;
- Changing the nature of selective teams – students with disabilities have to compete with everyone else and legitimately earn their place on the team; or
- Compromising student safety.

The Guidance also notes that a school district need not provide a modification, aid, or service if doing so would put an undue burden on its program. In most cases, however, we believe that providing reasonable modifications and necessary aids and services should not be unduly burdensome.

Does the Guidance Require School Districts to Create Separate, Parallel Extracurricular Athletic Programs for Students with Disabilities?

No. Where students with disabilities cannot be included in existing extracurricular athletic activities, even with reasonable modifications and necessary aids and services, the Guidance urges—but does not require—that school districts create additional opportunities for students with disabilities to participate in separate or different extracurricular athletic activities.

The Department's Office of Special Education and Rehabilitative Services issued a guidance document that, among other things, includes suggestions on ways to increase opportunities for children with disabilities to participate in physical education and athletic activities. That guidance, "Creating Equal Opportunities for Children and Youth with Disabilities to Participate in Physical Education and Extracurricular Athletics," August 2011, is available at <http://www2.ed.gov/policy/speced/guid/idea/equal-pe.pdf> (<http://www2.ed.gov/policy/speced/guid/idea/equal-pe.pdf>).

How can I get help from OCR?

OCR offers technical assistance to help schools achieve voluntary compliance with the civil rights laws it enforces and works with schools to develop approaches to preventing and addressing discrimination. A school should contact the OCR enforcement office serving its jurisdiction for technical assistance. For contact information, please visit ED's website at <http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm> (<http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm>).

A complaint of discrimination may be filed by anyone who believes that a school that receives Federal financial assistance has discriminated against someone on the basis of race, color, national origin, sex, disability, or age. The person or organization filing the complaint need not be a victim of the alleged discrimination, but may complain on behalf of another person or group. For information on how to file a complaint with OCR, visit <http://www.ed.gov/ocr/complaintintro.html> (<http://www2.ed.gov/about/offices/list/ocr/complaintintro.html>) or contact OCR's customer service team at 1-800-421-3481 (TDD 1-800-877-8339).

Top

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Last Modified: 01/10/2020

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

ALEX BROWN and TRENT CLAYTON, individually and on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff Butler
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Kevin Tucker, EAST END TRIAL GROUP LLC
6901 Lynn Way, Ste. 215, Pittsburgh, PA 15208
ktucker@eastendtrialgroup.com; (412) 877-5220

DEFENDANTS

PENNSYLVANIA INTERSCHOLASTIC ATHLETIC ASSOCIATION INC.

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input checked="" type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Title II and III of the Americans with Disabilities Act, 42 U.S.C. Section 12101 et seq.; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794
Brief description of cause:

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE

SIGNATURE OF ATTORNEY OF RECORD

8/24/2021

Kevin W. Tucker

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

JS 44A REVISED June, 2009

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA
THIS CASE DESIGNATION SHEET MUST BE COMPLETED

PART A

This case belongs on the (☐ Erie ☐ Johnstown ☒ Pittsburgh) calendar.

1. **ERIE CALENDAR** - If cause of action arose in the counties of Crawford, Elk, Erie, Forest, McKean, Venang or Warren, OR any plaintiff or defendant resides in one of said counties.
2. **JOHNSTOWN CALENDAR** - If cause of action arose in the counties of Bedford, Blair, Cambria, Clearfield or Somerset OR any plaintiff or defendant resides in one of said counties.
3. Complete if on **ERIE CALENDAR**: I certify that the cause of action arose in _____ County and that the _____ resides in _____ County.
4. Complete if on **JOHNSTOWN CALENDAR**: I certify that the cause of action arose in _____ County and that the _____ resides in _____ County.

PART B (You are to check ONE of the following)

1. ☐ This case is related to Number _____ . Short Caption _____.
2. ☒ This case is not related to a pending or terminated case.

DEFINITIONS OF RELATED CASES:

CIVIL: Civil cases are deemed related when a case filed relates to property included in another suit or involves the same issues of fact or it grows out of the same transactions as another suit or involves the validity or infringement of a patent involved in another suit
EMINENT DOMAIN: Cases in contiguous closely located groups and in common ownership groups which will lend themselves to consolidation for trial shall be deemed related.

HABEAS CORPUS & CIVIL RIGHTS: All habeas corpus petitions filed by the same individual shall be deemed related. All pro se Civil Rights actions by the same individual shall be deemed related.

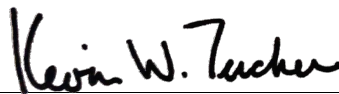
PART C

I. CIVIL CATEGORY (Select the applicable category).

1. ☐ Antitrust and Securities Act Cases
2. ☐ Labor-Management Relations
3. ☐ Habeas corpus
4. ☒ Civil Rights
5. ☐ Patent, Copyright, and Trademark
6. ☐ Eminent Domain
7. ☐ All other federal question cases
8. ☐ All personal and property damage tort cases, including maritime, FELA, Jones Act, Motor vehicle, products liability, assault, defamation, malicious prosecution, and false arrest
9. ☐ Insurance indemnity, contract and other diversity cases.
10. ☒ Government Collection Cases (shall include HEW Student Loans (Education), V A Overpayment, Overpayment of Social Security, Enlistment Overpayment (Army, Navy, etc.), HUD Loans, GAO Loans (Misc. Types), Mortgage Foreclosures, SBA Loans, Civil Penalties and Coal Mine Penalty and Reclamation Fees.)

I certify that to the best of my knowledge the entries on this Case Designation Sheet are true and correct

Date: 8/24/2021



ATTORNEY AT LAW

NOTE: ALL SECTIONS OF BOTH SHEETS MUST BE COMPLETED BEFORE CASE CAN BE PROCESSED.

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit Claims Pennsylvania Denies Disabled Athletes Chance to Compete in State Track and Field Championships](#)
