

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF ARKANSAS  
CENTRAL DIVISION**

ARKANSAS ASSOCIATION OF THE DEAF,

Plaintiff,

v.

COMMISSIONER AND SECRETARY OF THE ARKANSAS DEPARTMENT OF EDUCATION JACOB OLIVA, in his official capacity, and ARKANSAS BOARD MEMBER SARAH MOORE, in her individual capacity, ARKANSAS BOARD MEMBER KATHY MCFETRIDGE-ROLLINS, in her official capacity, ARKANSAS BOARD MEMBER ADRIENNE WOODS, in her official capacity, ARKANSAS BOARD MEMBER RANDY HENDERSON, in his official capacity, ARKANSAS BOARD MEMBER LISA HUNTER, in her official capacity, ARKANSAS BOARD MEMBER JEFF WOOD, in his official capacity, ARKANSAS BOARD MEMBER KEN BRAGG, in his official capacity, ARKANSAS BOARD MEMBER LEIGH S. KEENER, in her official capacity, and ARKANSAS BOARD MEMBER GARY ARNOLD, in his official capacity.

Defendants.

Case No.:

**MEMORANDUM OF LAW IN  
SUPPORT OF PLAINTIFF'S  
MOTION FOR PRELIMINARY  
INJUNCTION**

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## RELIEF SOUGHT AND SPECIFIC GROUNDS FOR MOTION

The Arkansas Association of the Deaf (“AAD” or “Plaintiff”)<sup>1</sup> requests this Court issue a preliminary injunction barring the Secretary of the Arkansas Department of Education (“ADE”), and the Arkansas State Board of Education (“ASBE”) board members (collectively, the “Defendants”) from continuing construction of the new “Arkansas School for the Deaf and Blind” pending the resolution of this case. In determining the need for a new facility, Defendants published a survey<sup>2</sup> that solicited feedback from “stakeholders” with direct connections to ASD and ASBVI”. But Defendants refused to ensure the survey was accessible. In doing so, Defendants denied Plaintiff of their rights under the Americans with Disabilities Act and the Rehabilitation Act.

Injunctive relief is appropriate to protect Plaintiff and the public. As explained below, (1) Plaintiff is likely to succeed on the merits, (2) Plaintiff is suffering and will continue to suffer immediate and irreparable harm in the absence of preliminary relief, and (3) the balance of equities and public interest favors an injunction. Accordingly, Plaintiff requests this Court grant this motion.<sup>3</sup>

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<sup>1</sup> AAD advocates for the rights and interests of deaf Arkansans, including those who are a part of Arkansas School for the Deaf (“ASD”) and Arkansas School for the Blind and Visually Impaired (“ASBVI”).

<sup>2</sup> AAD received a document production from ADE in response to a Freedom of Information Act (“FOIA”) request. This document production contained several surveys for 2023-2024. The surveys appear to vary based on the respondent’s role (student, staff, parent, or community), with one version containing 152 questions across 106 pages. For the purposes of this motion, Plaintiff refers to all versions collectively as the “ADE survey” or “survey.” Plaintiff is still uncertain about the exact contents of the other surveys or what versions were distributed to the ASD and ASBVI communities.

<sup>3</sup> If the Court considers the need for a bond from Plaintiff, the Court should waive the bond requirement under Federal Rule of Civil Procedure 65(c). *See Richland/Wilkin Joint Powers Auth. v. U.S. Army Corps of Eng’rs*, 826 F.3d 1030, 1043 (8th Cir. 2016) (whether to require bond is within court’s discretion). The granting of a preliminary injunction to protect Plaintiff’s rights under the Americans with Disabilities Act and the Rehabilitation Act will not damage or cost Defendants in any meaningful way that would support the requirement of a bond.

## INTRODUCTION

At its core, this case is about the systemic erasure of deaf and hard of hearing Arkansans' voices through deliberate exclusion from decisions directly shaping their community's future. The failure to provide American Sign Language ("ASL") translations and audio descriptions of the December 22, 2023, ADE survey violated Title II of the Americans with Disabilities Act, 42 U.S.C. § 12181 et seq. ("Title II") and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 et seq. ("Section 504"). Further, Defendants' discriminatory conduct deprived an entire community of their right to participate in the decision-making process concerning ASD and ASBVI, effectively destroying their right to civic participation.

Plaintiff's members are Deaf, Deafblind, DeafDisabled, hard of hearing, or late-deafened individuals (collectively, "deaf" unless specified otherwise) who use various communication methods, including ASL, tactile sign language, speech, and braille. Plaintiff's members have direct ties to ASD or ASBVI as students, staff, or community members (e.g., alumni, grandparents, neighbors, or volunteers). Plaintiff's members are part of the targeted audience of the ADE survey that was circulated by Defendants. The ADE survey sought feedback from "stakeholders" with direct ties to ASD and ASBVI regarding these schools. Plaintiff's members want to respond to the survey and provide meaningful feedback for Defendants. But Defendants set up Plaintiff's members for failure by refusing to provide them with auxiliary aids to understand the survey questionnaire. As a result of Defendants' violations of federal law, Plaintiff's members could not meaningfully participate in the political process.

The term "deaf and hard of hearing" refers to hearing levels or loss that qualify as "disabilities" under Title II and Section 504. ASL is the primary and preferred language for many of Plaintiff's members. ASL is a distinct visual-gestural language with its vocabulary, grammar, and

structure, separate from English—it is not English in hand signals. ASL has no written component. For several reasons, including early language deprivation, many deaf people have a very limited ability to read and write in English. Deaf people who do not read and write English fluently require sign language interpreters to translate written documents into sign language, especially for complex topics. Some of Plaintiff’s members are hard of hearing with concurrent blindness or low vision. Not all these individuals use braille to access written content. Instead, they rely on audio descriptions to obtain written information through listening.

The ADE survey solicited feedback regarding the quality of ASD and ASBVI education, sufficiency of funding for ASD and ASBVI, availability of ADE resources for ASD and ASBVI, and other topics relevant to the ASD and ASBVI communities. But the survey used ambiguous terminology and repetitive language, making comprehension exceptionally challenging for Plaintiff’s members. It is worth noting that even some of Plaintiff’s members who do not predominantly use ASL encountered significant challenges in comprehending the survey. This is a revealing indicator of the substantial difficulties faced by Plaintiff’s members who rely on ASL. Yet Defendants continued to refuse to make the survey accessible. Without effective communication, Plaintiff’s members face a heightened risk of being stripped of their right to participate in decisions that impact their community.

Preliminary injunctive relief is warranted. Defendants have failed to comply with federal law. Plaintiff’s members face the danger of further exclusion from civic participation. The refusal of Defendants to provide effective communication for the survey violates federal law and constitutes further irreparable harm. Balancing the hardships and public interest strongly weighs in favor of requiring Defendants to comply with federal law, particularly because the very purpose of these laws is to eradicate, not to perpetuate, discrimination against individuals with disabilities.



Accordingly, Plaintiff requests that this Court issue an order: (1) restraining Defendants from violating Title II and Section 504, (2) ceasing construction of the new facility, (3) requiring Defendants to immediately republish the ADE survey with appropriate accessibility measures, including but not limited to ASL translations and audio descriptions for at least a period of four weeks, (4) enjoining Defendants from relying on the results of the original survey, and (5) directing Defendants to include Plaintiff's members in the ongoing "stakeholder" meetings with ADE, SCM Architects, and Mackey Mitchell Architects regarding the construction of the new "Arkansas School for the Deaf and Blind" with qualified ASL interpreters and other necessary accommodations for meaningful participation by Plaintiff's members.

## **BACKGROUND<sup>4</sup>**

### **I. Plaintiff**

AAD is the sole civil rights organization of, by, and for deaf Arkansans with the mission of ensuring deaf people achieve full participation in life and community. Prail Decl. ¶ 4. AAD's members include individuals who are substantially limited in hearing, speaking and/or seeing. *Id.* ¶ 6. Most of AAD's members communicate primarily in ASL. Other AAD members rely on audio descriptions to obtain information.

AAD has associational standing to sue on behalf of its members, because AAD has members residing in Arkansas who are being discriminated against by Defendants. Compl. ¶¶ 16-19; Prail Decl. ¶¶ 7, 12, 14. Such members have standing to sue Defendants on their own. Advocating on behalf of its members is germane to AAD's mission. Compl. ¶ 19; Prail Decl. ¶ 5. None of

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<sup>4</sup> Plaintiff directs the Court to their Complaint filed simultaneously with this motion ("Compl."), and the declarations attached hereto, for a full recitation of the relevant facts. *See* Declaration of Ashley Harris ("Harris Decl."), Declaration of Sonja Creed-Watson ("Creed-Watson Decl."), and Declaration of Jeff Prail ("Prail Decl.").

AAD's members are required to participate in this action because AAD seeks declaratory and injunctive relief, not an individualized remedy for its members. Compl. ¶ 19.

## **II. Defendants**

ADE serves as the primary administrative agency providing leadership, resources, and support to institutions, school districts, and communities in Arkansas to ensure students are prepared for postsecondary education, workforce participation, and civic engagement.

Jacob Oliva, who is being sued in his official capacity as Secretary, is the Secretary of ADE and the Commissioner of ADE's Division of Elementary and Secondary Education. As Secretary, he oversees Arkansas' state-led programs involving early learning and K-12 education, including ASD and ASBVI.

ASBE board members Sarah Moore, Kathy McFetridge-Rollins, Adrienne Woods, Randy Henderson, Lisa Hunter, Jeff Wood, Ken Bragg, Leigh Keener, and Gary Arnold, who are being sued in their official capacities, are members of the Arkansas State Board of Education. The ASBE is the policy-making body for public K-12 education in Arkansas.

## **III. Defendants' Unlawful Conduct**

On December 22, 2023, ADE published the survey on its Facebook page with a deadline of January 5, 2024, allowing only fourteen days to respond during the holiday season. Harris Decl. ¶ 5. Staff at the school were provided with no notice that this survey would be forthcoming, nor were parents, students, or community members. Harris Decl. ¶ 7. Most of Plaintiff's members only discovered the survey's existence after being notified by AAD. Harris Decl. ¶ 5. This inefficient communication further limited participation. Harris ¶¶ 9-12.

The survey was lengthy, in written English, and did not contain ASL translations or audio descriptions. Creed-Watson Decl. ¶ 6; Harris Decl. ¶¶ 8-9; Prail Decl. ¶¶ 12, 14. It was inaccessible

by design to Plaintiff’s members, its purported audience. Prail Decl. ¶¶ 7, 14. ADE ignored Plaintiff’s multiple requests to republish the survey with ASL translations and audio descriptions. Compl. ¶¶ 5, 48; Prail Decl. ¶ 9. The ADE survey solicited feedback from “stakeholders” with direct ties to ASD and ASBVI. Compl. ¶¶ 4, 34-35; Harris Decl. ¶ 8. This survey used ambiguous terminology and repetitive language in English, which prevented Plaintiff’s members from understanding the survey questions. Compl. ¶ 36. Even people with English proficiency struggled to complete the survey because of the unclear language.

AAD expressed their concerns about the inaccessibility of the survey on multiple occasions. Prail Decl. ¶ 8. AAD requested Defendants to republish the survey with proper accessibility measures. *Id.* ¶ 9. Despite being aware of AAD’s concerns and requests to make the survey accessible to its members, Defendants failed to do so. Compl. ¶ 5. This blatant refusal to provide effective communication for Plaintiff’s members has excluded the community the survey was designed to benefit. Creed-Watson Decl. ¶ 7; Harris Decl. ¶ 9; Prail Decl. ¶ 14.

## ARGUMENT

In determining whether to issue a preliminary injunction, the court must consider: “(1) the likelihood of success on the merits; (2) the presence or risk of irreparable harm; (3) the balancing of harms of granting or denying an injunction; and (4) the public’s interest.” *CDI Energy Servs., Inc. v. West River Pumps, Inc.*, 567 F.3d 398, 401-402 (8th Cir. 2009) (citing *Dataphase Sys., Inc. v. CL Sys., Inc.*, 640 F.2d 109, 114 (8th Cir. 1981)). While no single prong of the preliminary injunction standard is determinative, “the probability of success factor is the most significant.” *MPay, Inc. v. Erie Custom Comput. Applications, Inc.*, 970 F.3d 1010, 1015 (8th Cir. 2020) (internal quotations and citations omitted); *Richland/Wilkin*, 826 F.3d at 1040 (To obtain a preliminary injunction, plaintiff “need only establish a likelihood of succeeding on the merits on any one of

[their] claims.”). Furthermore, this standard applies in cases where, as here, some of the relief sought involves compelling a party to take affirmative action. *See, e.g., Ferry-Morse Seed Co. v. Food Corn, Inc.*, 729 F.2d 589, 593 (8th Cir. 1984) (“[W]here the status quo is a condition not of rest, but of action, and the condition of rest . . . will cause irreparable harm, a mandatory preliminary injunction is proper.”).

## **I. Plaintiff Is Likely to Succeed on the Merits**

### **A. Plaintiff Is Likely to Succeed on Their Title II and Section 504 Claims**

“Congress enacted the ADA in 1990 to remedy widespread discrimination against disabled individuals.” *P.G.A. Tour, Inc. v. Martin*, 532 U.S. 661, 674 (2001). After a thorough investigation of the problem, “Congress concluded that there was a compelling need for a clear and comprehensive mandate to eliminate discrimination against disabled individuals, and to integrate them into the economic and social mainstream of American life”—the ADA “provided that broad mandate.” *Id.* at 675 (internal quotation marks and citations omitted).

Title II provides, in relevant part:

[N]o 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.

Similarly, Section 504 provides that:

No otherwise qualified individual with a disability in the United States . . . 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).

In other words, “Title II forbids any ‘public entity’ from discriminating based on disability,” while “Section 504 applies the same prohibition to any federally funded ‘program or activity.’”

*Fry v. Napoleon Comm. Schs.*, 137 S. Ct. 743, 749 (2017). The Eighth Circuit construes the ADA and Section 504 to impose similar requirements. *See A.J.T. v. Osseo Area Sch.*, 96 F.4th 1058, 1060 (8th Cir. 2024) (“Claims under Section 504 and the ADA live and die together, as the enforcement, remedies, and rights are the same under both”) (quotation marks and citation omitted); *see also Bahl v. County of Ramsey*, 695 F.3d 778, 783 (8th Cir. 2012) (“The ADA and [Section] 504 of the Rehabilitation Act . . . with the exception of the Rehabilitation Act’s federal funding requirement, ‘cases interpreting either are applicable and interchangeable’ for analytical purposes.”).

Hence, to prove a violation of Title II or Section 504, a plaintiff must show:

1) he is a qualified individual with a disability; 2) he was excluded from participation in or denied the benefits of a public entity’s services, programs, or activities, or was otherwise discriminated by the entity; and 3) that such exclusion, denial of benefits, or other discrimination, was by reason of his disability.

*Layton v. Elder*, 143 F.3d 469, 472 (8th Cir. 1998).

i. *Plaintiff’s Members Are Qualified Individuals with Disabilities*

Since Plaintiff’s members are deaf, and some have concurrent blindness or low vision, they are individuals with disabilities. *See* 42 U.S.C. § 12102(2)(A); 29 U.S.C. § 705(9)(B). Plaintiff’s members are also qualified individuals with disabilities. *See Bahl*, 695 F.3d at 784 (“It is undisputed that, as a deaf person, [plaintiff] is a ‘qualified individual with a disability’”); *Segal v. Metro. Council*, 29 F.4th 399, 403 (8th Cir. 2022) (recognizing Deafblind plaintiff as a qualified individual under Title II without discussion).

ii. *Plaintiff’s Members Were Excluded from and/or Denied the Benefit of a Public Entity’s Programs or Activities*

Defendants’ failure to provide ASL translations and audio descriptions excluded Plaintiff’s members from, denied Plaintiff’s members the benefit of, and subjected Plaintiff’s members to discrimination under a program or activity conducted by Defendants. Plaintiff’s members require ASL translations and audio descriptions to effectively understand and respond to the ADE survey

because they are deaf. The lack of auxiliary aids and services deprived Plaintiff's members of effective communication, and therefore, they could not access the ADE survey because they could not understand the questions. As noted, Plaintiff's members rely on ASL translations or audio descriptions to understand written content.

The ADA's "services, programs, or activities" language encompasses "anything a public entity does." *Bahl*, 695 F.3d at 787-88 (citations omitted); *see also* 28 C.F.R. pt. 35, app. B (stating the same in Department of Justice regulations implementing Title II of the ADA). The survey constitutes a program or activity under the ADA and Section 504 because it is an official information-gathering function conducted by the ADE and ASBE. The ADE and ASBE are a department, agency, or instrumentality of the State of Arkansas; as such, they are public entities within the meaning of the ADA and Section 504. 42 U.S.C. §§ 12131(1)(A)-(B); 29 U.S.C. §§ 794(a), (b)(1)(A)-(B). Both are required to ensure that their programs and services, including the ADE survey, comply with federal nondiscrimination laws.

iii. *Plaintiff's Members Were Excluded From and/or Denied the Benefit of a Public Entity's Programs or Activities by Reason of Their Disabilities*

The ADA and Section 504 impose an affirmative obligation that public entities "shall take appropriate steps to ensure that communications . . . [with] individuals with disabilities are as effective as communications with others." 28 C.F.R. § 35.160(a). In other words, individuals with disabilities must receive "meaningful access" and not merely "limited participation" to the public entity's programs and activities. *Randolph v. Rodgers*, 170 F.3d 850, 858 (8th Cir. 1999). Furthermore, if necessary, a public entity must "furnish appropriate auxiliary aids and services" to ensure individuals with disabilities have "an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity. 28 C.F.R. § 35.160(b)(1). In determining what

auxiliary aids or services<sup>5</sup> are appropriate, “a public entity shall give primary consideration<sup>6</sup> to the requests of the individuals with disabilities.” 28 C.F.R. § 35.160(b)(2).

AAD has repeatedly asked the ADE to provide ASL translations and audio descriptions for the ADE survey. Prail Decl. ¶ 9. But Defendants have continued to refuse to provide Plaintiff’s members with ASL translations or audio descriptions or any other auxiliary aids and services. In doing so, Defendants have denied meaningful access to their programs and services for Plaintiff’s members. Even if some Plaintiff’s members could understand portions of the survey, this constitutes, at most, limited participation, which is insufficient. Creed-Watson Decl. ¶¶ 2, 7.

Plaintiff’s members want to answer the survey questions. Creed-Watson Decl. ¶ 7. They have the same goals as their hearing counterparts: to contribute to the future of ASD and ASBVI and participate in the political process. But because of the failure by Defendants to comply with federal law, Plaintiff’s members are being deprived of an equal opportunity to have their voices heard.

## **II. Plaintiff’s Members Are Suffering and Will Continue to Suffer Irreparable Harm Absent Injunctive Relief**

Absent a preliminary injunction barring the ADE from continuing to pursue a merger of ASD and ASBVI during the pendency of this litigation, Plaintiff’s members are likely to suffer irreparable harm. Where, as here, “a defendant has violated a civil rights statute,” courts “presume that the plaintiff has suffered irreparable injury from the fact of the defendant’s violation.” *Silver*

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<sup>5</sup> “Auxiliary aids and services” include “qualified interpreters” and “methods of making visually delivered materials available to individuals with visual impairments.” 42 U.S.C. § 12103; 28 C.F.R. § 42.503(f).

<sup>6</sup> Primary consideration means that “[t]he public entity shall honor the choice [of the individual with a disability] unless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required under § 35.164. Deference to the request of the individual with a disability is desirable because of the range of disabilities, the variety of auxiliary aids and services, and different circumstances requiring effective communication.” 28 CFR part 35, app. A at 580 (2009).

*Sage Partners, Ltd. v. City of Desert Hot Springs*, 251 F.3d 814, 827 (9th Cir. 2001); *see also* *Gresham v. Windrush Partners, Ltd.*, 730 F.2d 1417, 1423 (11th Cir. 1984) (“[I]rreparable injury may be presumed from the fact of discrimination and violations of fair housing statutes.”); *E.E.O.C. v. Cosmair, Inc., L’Oreal Hair Care Div.*, 821 F.2d 1085, 1090 (5th Cir. 1987) (“[W]hen a civil rights statute is violated, irreparable injury should be presumed from the very fact that the statute has been violated.” (internal quotation marks omitted)); *cf. Hobby Lobby Stores, Inc. v. Sebelius*, 723 F.3d 1114, 1146 (10th Cir. 2013) (likely violation of the Religious Freedom Restoration Act establishes irreparable harm), *aff’d sub nom. Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014). Courts apply this presumption in part because, “[i]n cases where a plaintiff’s civil rights have been violated,” it is often difficult to “quantify[] the harm done to the plaintiff.” *Hernandez v. Enfield Bd. of Educ.*, No. 3:19-CV-1907, 2024 WL 3011177, at \*3 (D. Conn. June 14, 2024). The ADA and Section 504 are civil rights statutes and, as shown above, Defendants have violated the rights of Plaintiff’s members under those statutes. Accordingly, irreparable injury to the Plaintiff’s members may be presumed. *See Bartell v. Grifols Shared Servs. NA, Inc.*, 618 F. Supp. 3d 275, 289-90 (M.D.N.C. 2022) (recognizing violation of Americans with Disabilities Act created a presumption of irreparable injury); *Arc of Iowa v Reynolds*, 559 F. Supp 3d 861, 878 (Dist. SD 2021) (holding that where plaintiffs are likely to succeed on the merits proving a violation of the ADA and Section 504, “Plaintiffs have shown an irreparable harm caused by Defendants’ violation of federal civil rights laws.”)

But even if this longstanding presumption did not exist, absent an injunction Plaintiff’s members suffer and will continue to suffer irreparable harm as Defendants rely on the unreliable results of the inaccessible survey as a pretext to dismantle the protections afforded in the education of children with vision and hearing related disabilities.



In January 2024, ADE spokesperson Kimberly Mundell underscored the survey as “one avenue to gauge feedback.”<sup>7</sup> Governor Sanders stated that the State of Arkansas relied on this “survey of the school community” to develop its comprehensive plan to rebuild and renovate ASD and ASBVI campuses.<sup>8</sup> Governor Sanders’ admission highlights how the exclusion of Plaintiff’s members from the survey directly impacted their community’s future.

The exclusion continued unabated. On March 14, 2025, at the groundbreaking ceremony for the new facility, Defendant ADE claims they hosted over thirty stakeholder meetings to obtain “input and feedback from students, parents, community members, and staff.”<sup>9</sup> But Plaintiff’s members, who represent a substantial portion of the ASD and ASBVI communities, have not been invited to or informed about these meetings despite repeated requests. This ongoing exclusion continues despite Arkansas state Senator Clarke Tucker and state House Representative Tippi McCullough emphasizing that nothing about ASD and ASBVI should be decided without input from deaf Arkansans.<sup>10</sup>

Most alarming, on March 17, 2025, Arkansas House Representatives Joey Carr and Tippi McCullough and Arkansas Senator Jane English introduced H.B. 1810. This bill proposes the merger of ASD and ASBVI into a single entity called the “Arkansas School for the Deaf and Blind.”

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<sup>7</sup> Jeannie Roberts, *Future of state deaf and blind schools up in the air*, Arkansas Times (Jan. 26, 2024), <https://arktimes.com/arkansas-blog/2024/01/26/future-of-state-deaf-and-blind-schools-up-in-the-air>.

<sup>8</sup> Josh Snyder, *Sanders announces plans for new, state-of-the-art facility on site of schools for the blind, hearing impaired*, Arkansas Democrat Gazette (Feb. 14, 2024), <https://www.arkansasonline.com/news/2024/feb/14/sanders-announces-plans-for-new-state-of-the-art/>.

<sup>9</sup> *Arkansas School for the Blind, Deaf Host Groundbreaking for New Facility*, AMP (Mar. 14, 2025), <https://armoneyandpolitics.com/arkansas-school-blind-deaf-groundbreaking/>.

<sup>10</sup> Roberts. *supra* note 7. Arkansas state Senator Clark Tucker in an interview stated, “We can’t just sit at this table and make these decisions without communicating with the people who live this day in and day out.” *Id.* State House Representative Tippi McCullough stated the same, “There was a concern for myself and Sen. Tucker and others that the community has to be involved in what’s going on.” *Id.*

H.B. 1810, 95th Gen. Assemb., Reg. Sess. (Ark. 2025) (“HB 1810”). HB 1810 proposes to eliminate the separate boards of trustees for ASD and ASBVI and replace them with a single board consisting of five members appointed by Governor Sarah Sanders. Under this proposed bill, these appointments are no longer subject to Senate confirmation or legislative oversight. The proposed bill eliminates the current statutory requirement that the board include one “member . . . who is a ‘deaf person who fluently utilizes deaf sign language,’” and in so doing, effectively removes guaranteed deaf representation on the governing board. Ark. H.B. 1810. Beyond governance changes, HB 1810 removes numerous protections and specific provisions related to the operation of ASD and ASBVI.

These sweeping changes present significant and irreparable harm for Plaintiff’s members. First, the removal of guaranteed deaf representation on the governing board eliminates an essential perspective that ensures the deaf community’s needs are understood and addressed. Prail Decl. ¶¶ 15-16. Specifically, deaf board members bring an understanding of deaf culture that cannot be replicated by hearing people, regardless of their qualifications. Second, consolidating the separate boards eliminates governance structures specifically created to address the distinct needs of deaf versus blind students. Lastly, removing Senate confirmation and legislative oversight reduces transparency and accountability in school governance. These changes if implemented will dismantle the institutional protections that have protected deaf Arkansans for decades, all without any meaningful input from Plaintiff’s members.

For 450 days and counting, Plaintiff’s members have been excluded from the opportunity to participate in decisions directly affecting them. As of this filing, construction has begun, and legislative changes are advancing rapidly. Plaintiff’s members continue to face uncertainty and

confusion about the future of ASD and ASBVI every day, and this violation of their rights cannot be remedied absent the certainty of a preliminary injunction.

### **III. The Balance of Equities and Public Interest Heavily Favor Plaintiff's Members**

In balancing the equities, the court weighs the threat of irreparable harm against any injury the injunction inflicts on other parties. *MPAY*, 970 F.3d at 1020 . When the government is the opposing party, as here, the balance of equities and public interest merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009).

The public interest strongly favors an injunction. Congress has mandated that the public interest requires equal treatment for persons with disabilities. 42 U.S.C. § 12132; 28 C.F.R. § 35.130(d). The Eighth Circuit has recognized that the “public interest strongly favors” enforcement of Title II of the ADA. *Layton*, 143 F.3d at 472 . Other courts within this circuit have held the same. *See, e.g., Heather K. v. City of Mallard*, 887 F. Supp. 1249, 1266 (N.D. Iowa 1995) (“the public interest is served by enforcement of anti-discrimination provisions of Title II of the ADA”); *Steelman v. City of Salem*, No. 4:12-cv-00191, at \*14 (E.D. Mo. Apr. 4, 2013) (emphasizing that the “public interest strongly favors mandating accessibility” in discussing whether plaintiff stated a claim under Title II of the ADA) (emphasis in original) (citation omitted)). This principle has been affirmed in other jurisdictions. *See, e.g., Ramsay v. Nat’l Bd. of Med. Examiners*, 968 F.3d 251 (3d Cir. 2020) (“[i]n enacting the ADA, Congress demonstrated its view that the public has an interest in ensuring the eradication of discrimination on the basis of disabilities.”); *Enyart v. Nat’l Conf. of Bar Examiners*, 630 F.3d 1153 (9th Cir. 2011) (same). Accordingly, allowing Defendants to continue to violate federal law is against the public interest.

Defendants will not be substantially harmed by an injunction. All Arkansans benefit when *every Arkansan* can contribute to the future of ASD and ASBVI. No legitimate public interest is served by suppressing statutory rights.

### CONCLUSION

Defendants have failed to ensure Plaintiff's members receive meaningful access to the ADE survey pursuant to Title II and Section 504. Without this Court's swift intervention Plaintiff's members will continue to be denied the opportunity to be heard to which they are entitled, causing them irreparable harm. This Court should expeditiously grant the requested injunctive relief.

Dated: March 20, 2025

Respectfully submitted

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*Counsel for Plaintiff*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF ARKANSAS  
CENTRAL DIVISION**

ARKANSAS ASSOCIATION OF THE DEAF,

Plaintiff,

v.

COMMISSIONER AND SECRETARY OF THE ARKANSAS DEPARTMENT OF EDUCATION JACOB OLIVA, in his official capacity, and ARKANSAS BOARD MEMBER SARAH MOORE, in her individual capacity, ARKANSAS BOARD MEMBER KATHY MCFETRIDGE-ROLLINS, in her official capacity, ARKANSAS BOARD MEMBER ADRIENNE WOODS, in her official capacity, ARKANSAS BOARD MEMBER RANDY HENDERSON, in his official capacity, ARKANSAS BOARD MEMBER LISA HUNTER, in her official capacity, ARKANSAS BOARD MEMBER JEFF WOOD, in his official capacity, ARKANSAS BOARD MEMBER KEN BRAGG, in his official capacity, ARKANSAS BOARD MEMBER LEIGH S. KEENER, in her official capacity, and ARKANSAS BOARD MEMBER GARY ARNOLD, in his official capacity.

Defendants.

Case No.:

**DECLARATION OF  
JEFF PRAIL**

I, Jeff Prail, pursuant to 28 U.S.C. § 1746, declare the following:

1. The facts set forth in this declaration are based on my personal first-hand knowledge, and if called as a witness, I could and would competently testify to the following matters under oath.

2. I am hard of hearing and my primary and preferred language is American Sign Language (“ASL”).

3. I am the Vice President of the Arkansas Association of the Deaf (“AAD”). I am authorized to provide this declaration on behalf of AAD.

4. AAD is the State of Arkansas’ sole civil rights organization of, by, and for deaf and hard of hearing individuals. AAD is organized as a non-profit corporation under the laws of the State of Arkansas and has its home office in Little Rock, Arkansas.

5. AAD’s mission is to help pave the way for all individuals to achieve full opportunity in life and community. AAD has provided leadership and advocacy on behalf of deaf and hard-of-hearing Arkansans and members of its association since the late 1800s.

6. AAD’s members include individuals who are substantially limited in the major life activities of hearing, speaking, or seeing. AAD advocates for the full and equal participation of its members in all aspects of society. The organization is devoted to the goal of full inclusion, equality, and civil rights for its members, who are deaf or hard of hearing individuals and whose lives are directly affected by hearing loss, including family members and professional service providers.

7. Based on multiple meetings and discussions with AAD members and my personal experience with taking the survey, the ADE survey was inaccessible for many AAD members.

8. As the Vice President of the AAD, I expressed my concerns about the accessibility of the ADE survey to Jack Sisson, the Arkansas Governor’s Senior Advisor for Healthcare and member of her Executive Staff and Secretary of the ADE, Jacob Oliva.

9. As the Vice President of AAD, I made multiple requests for the ADE survey to be republished with the appropriate accommodations, including ASL” translations and audio descriptions.

10. AAD was not informed of the ADE survey before December 22, 2023. AAD was never consulted regarding the survey.

11. I took the ADE survey and found that many questions lacked clarity, making it difficult to provide informed responses.

12. The ADE survey was intended for the deaf and blind communities but lacked proper accommodations, including ASL translations and audio descriptions.

13. The survey results were never shared with the ASD or ASBVI communities.

14. AAD’s members feel that the survey results are fundamentally flawed, as many participants—particularly deaf and blind individuals and school staff—did not fully understand the questions because of the lack of ASL translations and audio descriptions.

15. AAD strongly opposes Arkansas House Bill 1810. H.B. 1810, 95th Gen. Assemb., Reg. Sess. (Ark. 2025) (“HB 1810”). HB 1810 seeks to remove the mandate for at least one deaf signing member on the ASD Board of Directors. Preserving this requirement ensures that the interests of the deaf Arkansans are represented.

16. AAD adopts the position that deaf and blind students have different educational needs, learning modalities, and cultural contexts. A merger between ASD and ASBVI will compromise the educational needs of each student population. Furthermore, each school needs its own

superintendent who is knowledgeable about the educational needs of its population. Specifically, the ASD superintendent must have a deep understanding of deaf education, ASL, and deaf culture. Likewise, the superintendent for ASBVI must have a deep understanding of educational needs for students who are blind or have low vision. Consolidating two distinct superintendent positions dilutes expertise and harms educational outcomes for deaf and blind students.

I declare under the penalty of perjury that the foregoing is true and correct.

  
\_\_\_\_\_  
JEFF PRAIL



**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF ARKANSAS  
CENTRAL DIVISION**

ARKANSAS ASSOCIATION OF THE DEAF,

Plaintiff,

v.

COMMISSIONER AND SECRETARY OF THE ARKANSAS DEPARTMENT OF EDUCATION JACOB OLIVA, in his official capacity, and ARKANSAS BOARD MEMBER SARAH MOORE, in her individual capacity, ARKANSAS BOARD MEMBER KATHY MCFETRIDGE-ROLLINS, in her official capacity, ARKANSAS BOARD MEMBER ADRIENNE WOODS, in her official capacity, ARKANSAS BOARD MEMBER RANDY HENDERSON, in his official capacity, ARKANSAS BOARD MEMBER LISA HUNTER, in her official capacity, ARKANSAS BOARD MEMBER JEFF WOOD, in his official capacity, ARKANSAS BOARD MEMBER KEN BRAGG, in his official capacity, ARKANSAS BOARD MEMBER LEIGH S. KEENER, in her official capacity, and ARKANSAS BOARD MEMBER GARY ARNOLD, in his official capacity.

Defendants.

Case No.:

**DECLARATION OF  
SONJA CREED-WATSON**

I, Sonja Creed-Watson, pursuant to 28 U.S.C. § 1746, declare the following:

1. The facts set forth in this declaration are based on my personal first-hand knowledge, and if called as a witness, I could and would competently testify to the following matters under oath.

2. I am deaf and my primary and preferred language is American Sign Language ("ASL"). While I know some English, I can communicate more fully, both expressively and receptively, in ASL. For important or high-stakes communication, I require ASL interpretation/translation to ensure that I can meaningfully participate.

3. I am a member of Arkansas Association of the Deaf.

4. I was employed as an assistant teacher at the Arkansas School for the Deaf ("ASD"). During my employment, I helped students from kindergarten through high school, providing extra support for students who were behind academically.

5. I became aware of the Arkansas Department of Education ("ADE") survey when I received a work email from then-interim ASD President Gretchen Cobb.


6. The ADE survey did not have ASL translations or audio descriptions.

7. If ASL translations had been provided with the survey, I would have been able to complete the survey.

8. If I had been able to thoroughly complete the survey, I would have indicated that I opposed a merger of ASD and the Arkansas School for the Blind and Visually Impaired ("ASBVI") and that I opposed the elimination of one of the superintendent positions. I support the requirement that the ASD Board maintain at least one deaf signing member.

9. I believe that merging ASD and ASBVI is not in the interest of deaf and blind children and will adversely impact their education.

I declare under the penalty of perjury that the foregoing is true and correct.

  
SONJA CREED-WATSON

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF ARKANSAS  
CENTRAL DIVISION**

ARKANSAS ASSOCIATION OF THE DEAF,

Plaintiff,

v.

COMMISSIONER AND SECRETARY OF THE ARKANSAS DEPARTMENT OF EDUCATION JACOB OLIVA, in his official capacity, and ARKANSAS BOARD MEMBER SARAH MOORE, in her individual capacity, ARKANSAS BOARD MEMBER KATHY MCFETRIDGE-ROLLINS, in her official capacity, ARKANSAS BOARD MEMBER ADRIENNE WOODS, in her official capacity, ARKANSAS BOARD MEMBER RANDY HENDERSON, in his official capacity, ARKANSAS BOARD MEMBER LISA HUNTER, in her official capacity, ARKANSAS BOARD MEMBER JEFF WOOD, in his official capacity, ARKANSAS BOARD MEMBER KEN BRAGG, in his official capacity, ARKANSAS BOARD MEMBER LEIGH S. KEENER, in her official capacity, and ARKANSAS BOARD MEMBER GARY ARNOLD, in his official capacity.

Defendants.

Case No.:

**DECLARATION OF  
ASHLEY HARRIS**

I, Ashley Harris, pursuant to 28 U.S.C. § 1746, declare the following:

1. The facts set forth in this declaration are based on my personal first-hand knowledge, and if called as a witness, I could and would competently testify to the following matters under oath.

2. I am deaf and my primary and preferred language is American Sign Language (“ASL”).

3. I am a member of Arkansas Association of the Deaf.

4. I am an alumnus of Arkansas School for the Deaf (“ASD”), a former teacher at ASD, and have two children currently enrolled at ASD.

5. On December 28, 2023, I learned through the Arkansas Association of the Deaf (“AAD”) that the Arkansas Department of Education (“ADE”) had posted a survey on its Facebook page. The survey had a deadline of January 5, 2024.

6. At the time this survey was released and open, I was employed as a teacher at ASD.

7. ASD staff were provided no notice that this survey would be forthcoming, nor were the parents, students, or community members. The survey was not distributed to staff, parents, students, or community members via mail or email. ADE’s Facebook post was the only means by which to access the survey.

8. The ADE survey spanned approximately 50 pages and consisted of questions about the operations of ASD and Arkansas School for the Blind and Visually Impaired (“ASBVI”).

9. The ADE survey lacked appropriate auxiliary aids, including ASL translations for deaf respondents or audio descriptions for blind respondents.

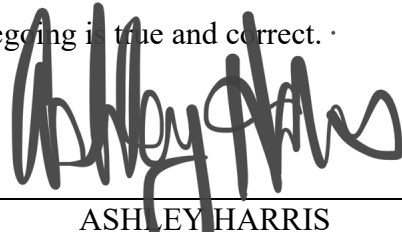
10. Based on the timing, content, and lack of accessibility of the survey, I believe ADE conducted this survey to gather selective feedback to justify a predetermined plan to merge ASD and ASBVI.

11. After the survey closed, the President of ASD emailed all employees expressly forbidding discussion of the survey internally among staff or externally with the community. This directive silenced employees from freely discussing their concerns about the survey.

12. In February 2024, the Secretary of ADE, Jacob Oliva, shared that the survey received around 200 responses. Given the time, length, and accessibility barriers, I do not believe these responses are an accurate measure of the desires of the ASD and ASBVI communities.

13. I do not support the merger for ASD and ASBVI. I believe that merging the two schools will have an adverse impact on the education of deaf and blind Arkansans.

I declare under the penalty of perjury that the foregoing is true and correct.

A handwritten signature in black ink, appearing to read "Ashley Harris", is written over a horizontal line.

ASHLEY HARRIS