

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ELLIS KEMPF,)	
)	
Plaintiff,)	2:15-CV-14227
)	
v.)	Honorable Nancy G. Edmunds
)	
THE MICHIGAN HIGH SCHOOL)	
ATHLETIC ASSOCIATION,)	
)	
Defendant.)	
	/	

CONSENT DECREE

This action arose out of a complaint filed by Plaintiff Ellis Kempf (“Plaintiff”) alleging that Defendant Michigan High School Athletic Association (“MHSAA” or “Defendant”), violated Titles II and V of the Americans with Disabilities Act (“ADA”), Section 504 of the Rehabilitation Act of 1973 (the “Rehabilitation Act”), and the Michigan Persons with Disabilities Civil Rights Act (“PWDA”), by not allowing Plaintiff’s sign language interpreter unrestricted access around the 28-foot wrestling circle at MHSAA sponsored wrestling matches.

The MHSAA denies these allegations, including whether the statutes recited above apply to the MHSAA.

The MHSAA has been and remains committed to providing a safe and competitive interscholastic athletic experience for all participants, coaches, and officials in MHSAA-sponsored sports and events, including those with and without disabilities.

The Parties have determined and agreed that there is no further need to litigate this matter. With the mutual intent of further accommodating MHSAA wrestling participants who are deaf and hard of hearing, the Parties have jointly agreed to the final disposition of this action in its entirety by Consent Decree, the terms of which are as follows:

1. Jurisdiction and Venue

This Court has jurisdiction over the above-captioned action pursuant to 28 U.S.C. § 1331. Venue is proper in the Eastern District of Michigan pursuant to 28 U.S.C. § 1391 because a substantial portion of the events giving rise to the cause of action occurred in the District, and MHSAA has sufficient contacts to be subject to the personal jurisdiction in this District.

2. **Defined Terms**

The following definitions apply to this Consent Decree:

- a. “Active Wrestling Circle” means the area on the wrestling mat designated by a 28-foot-wide circle, which identifies the area in which the wrestlers must remain to be considered “in-bounds.”
- b. “Affected Parties” means any Qualified Wrestler who is eligible to compete in an MHSAA sponsored event, and therefore may request and receive the additional accommodations provided by this Consent Decree.
- c. “Consent Decree” means the terms set forth in this document, and ordered and decreed by the Court in this action.
- d. “MHSAA Sponsored Event” means any Michigan member high school wrestling competition sponsored, sanctioned, controlled, or otherwise overseen by Defendant MHSAA, specifically including postseason competition such as MHSAA Districts, MHSAA Regionals, and MHSAA Finals, over which MHSAA-registered referees preside.
- e. The “Parties” refers to the following:
 - i. Plaintiff herein, Ellis Kempf; and
 - ii. Defendant herein, Michigan High School Athletic Association, Inc.
- f. “Sign Language Interpreter” or “Interpreter” means an individual who aids a Qualified Wrestler in communicating with others through sign language, whether provided for the qualified wrestler by the wrestler, the school(s), or a third party.
- g. “Qualified Wrestler” means any student, who otherwise meets all MHSAA eligibility and other applicable requirements to compete in an MHSAA Sponsored Event (as defined herein), and who is deaf, hard of hearing, or otherwise requires a sign language interpreter in order to communicate.

3. **Modifications to MHSAA’s Policies Regarding Sign Language Interpreters at MHSAA-Sponsored High School Wrestling Matches**

- a. *Applicability.* These binding modifications are meant to clarify MHSAA’s policies regarding the use of sign language interpreters for Qualified Wrestlers who are deaf, hard of hearing, or otherwise require a sign language interpreter, and who wish to participate in MHSAA Sponsored Events (as defined herein), including postseason competition.

- b. *Presence and Purpose of Sign Language Interpreter.* At all MHSAA Sponsored Events (as defined herein), a sign language interpreter will be allowed to be present for any Qualified Wrestler who is deaf or hard of hearing. The purpose of the sign language interpreter is to relay, between anyone present including coaches, officials providing instructions to participants, referees, official scorers, and/or other competitors, and the Qualified Wrestler any and all auditory information including, but not limited to, instructions, reports of injuries, indications of the beginning and end of points and matches, technical advice from coaches, and all other auditory information that the interpreter, in their professional training and experience, deems necessary for the well-being of the Qualified Wrestler to promote safety and effective communication.
- c. *Presence of Sign Language Interpreter During Active Wrestling Matches.* Sign language interpreters present at MHSAA Sponsored Events pursuant to part 3b above, will be allowed 360 degree access around the 28-foot circle on the Qualified Wrestler's mat , subject to the following requirements:
- i. The sign language interpreter will be required to stay outside the Active Wrestling Circle at all times.
 - ii. If the wrestling mat and venue where the match is taking place are large enough, the sign language interpreter will be required to stay six feet from the Active Wrestling Circle at all times. The six-foot barrier may be marked using tape or other methods.
 - iii. If the mat and venue in question are not large enough to accommodate the six foot requirement referenced in part 3(c)(ii) above, the sign language interpreter, after discussing the matter with the referee assigned to the match, will be allowed to position themselves closer to the ring, while still remaining outside of the Active Wrestling Circle, and ensuring they avoid contact or interference with referees, participants, and coaches.
 - iv. Prior to the start of each match in which a Qualified Wrestler may utilize the services of a sign language interpreter, the Qualified Wrestler or interpreter shall notify the assigned referee of the sign language interpreter's presence and participation.
 - v. The sign language interpreter shall make reasonable efforts to not interfere with participants, referees, the scores officials, or coaches, or otherwise interfere with the Qualified Wrestler's match and/or matches occurring on adjacent mats during multi-team contests, such as unreasonably blocking or

restricting movement of participants, coaches, or referees, or obstructing a coach's, referee's, or score official's view.

- vi. In the event a sign language interpreter positioned pursuant to this Consent Decree makes contact with a participant, coach, scores official, or referee, interferes with an active match, coach, scores official, or referee, or otherwise violates any provision of this Section 3, the referee overseeing the match in question will have the discretion to ask the sign language interpreter to position themselves farther or differently from the Active Wrestling Circle, provided that the interpreter remains able to communicate effectively with the Qualified Wrestler.
 - vii. By participating as an interpreter during an active match for a Qualified Wrestler under this Consent Decree, the interpreter assumes the risks associated therewith and waives any and all claims against the MHSAA for injury that might result from such participation. The Qualified Wrestler is responsible for informing the interpreter about this Consent Decree.
- d. *Notice to Affected Parties.* MHSAA will make reasonable efforts to inform all Affected Parties of the existence of this Consent Decree, and the accommodations afforded by it, by providing a copy of this Consent Decree to an MHSAA member school upon request and by posting it on its website's wrestling webpage.

4. **Release and Dismissal**

Release and Dismissal

The Parties agree that this Consent Decree applies to all known, unknown, and unanticipated claims, damages, and expenses as of the date of execution of this Agreement, and they waive any rights that they might have under any statute or legal theory and bars the need to litigate them further, effectively dismissing this action with prejudice, except as provided herein.

Upon entry of this Consent Decree, Plaintiff (as specifically defined herein) hereby releases and forever discharges the MHSAA, and each of its respective past, present, and future employees; its parent, subsidiary, predecessor, and affiliate corporations or other business entities; and its past, present and future officers, directors, employees, agents, heirs, personal representatives, Representative Council members, Executive Committee members, attorneys, and assigns from any and all claims, counterclaims, remedies, liabilities, debts, demands, costs, expenses, set-offs, and third-party actions of any kind or nature whatsoever, whether known or unknown, matured or unmatured, foreseen or unforeseen, suspected or unsuspected, accrued or unaccrued which they ever had, now have, or claim to have had, occurring up until the effective date of this Consent Decree against any entities or persons identified in this paragraph, related to the MHSAA policies regarding sign-language interpreters at MHSAA sponsored events. This release also specifically includes, but is not limited to, the Charge of Discrimination filed on behalf of Plaintiff with the Michigan

Department of Civil Rights (MDCR # 461521), which Plaintiff and or his representative shall withdraw within seven days upon entry of this Consent Decree.

5. Attorneys' Fees and Costs

Each Party agrees to bear its own costs and fees related to the above referenced litigation and the preparation of this Consent Decree.

6. Miscellaneous

- a. *Enforcement.* This Court shall retain jurisdiction over this action for the purpose of ensuring compliance and enforcing the provisions of this Consent Decree; except that at the end of Plaintiff's 2015-2016 MHSAA wrestling season (for any reason), the Parties agree that this Consent Decree, as it applies to Plaintiff, shall automatically terminate without additional Court action.

The Court may grant declaratory and injunctive relief as necessary to enforce this Consent Decree pursuant to 28 U.S.C. §§ 2201 and 2202, and 15 U.S.C. § 1116.

Failure by any Party to seek enforcement of this Consent Decree pursuant to its terms with respect to any instance or provision shall not be construed as a waiver to such enforcement with regard to other instances or provisions.

Plaintiff and Defendant may seek reasonable attorneys' fees related to any judicial action to enforce this decree.

An Affected Party shall notify MHSAA of an alleged violation of this Consent Decree within 45 days of the alleged violation, or the Affected Party shall be forever barred from pursuing enforcement proceedings with the Court related to the alleged violation.

Prior to initiating any proceeding in Court to enforce one or more terms of this Consent Decree, a Party or Affected Party shall first attempt to notify the Party or Affected Party against whom enforcement is sought, in an attempt to resolve the dispute without the Court's intervention, at least 14 days before seeking the Court's intervention, absent extenuating circumstances.

- b. *Binding Effect.* This Consent Decree is final and binding on the Parties, including their principals, agents, executors, administrators, representatives, successors in interest, beneficiaries, and assigns. This Consent Decree does not create or establish any precedent with respect to other sports or activities sponsored by the MHSAA.
- c. *Integration.* This Consent Decree embodies in full the terms of the agreement and understanding between the parties related to the subject matter of this action or this Consent Decree. Either Party may petition the Court to modify the terms of this Consent Decree if: there is an unforeseen change in the law or the wrestling rules of

the National Federation of State High School Associations that might impact the enforcement or compliance with this Consent Decree; if the additional accommodations provided herein actually result in regular injury(ies) to participants, coaches, referees, or interpreters; or for the reasons provided in Federal Rule of Civil Procedure 60.

SO ORDERED and DECREED.

PLAINTIFF ELLIS KEMPF, by his counsel,

NYMAN TURKISH PC

By: /S/ Jason M. Turkish

Jason M. Turkish, Michigan Bar # P76310

Ryan T. Kaiser, Michigan Bar # P79491

20700 Civic Center Dr., Suite 115

Phone: (248) 284-2480

Fax: (248) 262-5024

Jason.Turkish@NymanTurkish.com

Ryan.Kaiser@NymanTurkish.com

Melissa M. Nyman, California Bar #293207

5800 Stanford Ranch Road, Suite 720

Rocklin, CA 95765

Phone: (916) 218-4340

Fax: (916) 218-4341

Melissa.Nyman@NymanTurkish.com

DEFENDANT MHSAA, INC., by its counsel,

MILLER CANFIELD, PLC

By: /s/ Scott R. Eldridge

Scott R. Eldridge (P66452)

Miller, Canfield, Paddock and Stone, PLC

One Michigan Ave., Suite 900

Lansing, MI 48823

Phone: (517) 483-4918

Eldridge@millercanfield.com

s/ Nancy G. Edmunds

Hon. Nancy G. Edmunds

United States District Judge

Date: December 11, 2015