

No. 15-486

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IN THE  
*Supreme Court of the United States*

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DONNIKA IVY, *et al.*,

*Petitioners,*

—v.—

MIKE MORATH, TEXAS COMMISSIONER OF EDUCATION,

*Respondent.*

ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE FIFTH CIRCUIT

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**BRIEF OF NATIONAL ASSOCIATION OF THE DEAF,  
*ET AL.*, AS *AMICI CURIAE* IN SUPPORT OF  
PETITIONERS, URGING REVERSAL**

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**INTEREST OF *AMICI CURIAE*<sup>1</sup>**

*Amici Curiae* are the National Association of the Deaf, the Texas Association of the Deaf, the Deaf Action Center of Texas, the Texas Society of Interpreters for the Deaf, the Communication Service for the Deaf, Inc., Helping Educate to Advance the Rights of the Deaf, and the Harvard Law School Project on Disability. The National Association of the Deaf (NAD), founded in 1880, is the oldest civil rights organization in the United States, and is the nation's premier organization of, by, and for deaf and hard of hearing individuals. The mission of the NAD is to preserve, protect, and promote the civil, human, and linguistic rights of over 48 million deaf and hard of hearing individuals in the United States. The NAD endeavors to achieve true equality for its constituents in all aspects of society, including but not limited to education, employment, and ensuring full access to programs and services. The mission of the Texas Association of the Deaf is to preserve, protect, and promote the civil, human, and linguistic rights of deaf and hard of hearing people in Texas, and includes advocacy work in the areas of early intervention, education, employment, health care, mental health, technology, communication accessibility, and youth leadership. The Deaf Action Center of Texas has worked for over

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<sup>1</sup> The parties have consented to the filing of this brief. No party has authored this brief in whole or in part, and no one other than *amici*, their members, or their counsel has made a monetary contribution to the preparation or submission of this brief.

thirty years to eliminate barriers imposed on people who are deaf and hard of hearing through its advocacy to ensure advancement through education, economic security, and good health. The Texas Society of Interpreters for the Deaf was the first professional organization of interpreters in the nation and is a nonprofit organization that works to promote the development and expansion of quality interpreting services to persons who are deaf and hard of hearing. The Communication Service for the Deaf, Inc., is a national nonprofit organization that has advocated for effective communication for deaf individuals and provided sign language interpreting services in various settings, including driver's education courses and on-site driver examinations, for over forty years. Helping Educate to Advance the Rights of the Deaf is an all-volunteer nonprofit organization that promotes equal access to the legal system for individuals who are deaf and for people with disabilities. Finally, the Harvard Law School Project on Disability works to promote the human rights of people with disabilities worldwide.

### **SUMMARY OF ARGUMENT**

The ability to drive is fundamental to accessing employment and education, and to functioning independently in society. This is particularly true in areas that are rural and without significant public transportation options. The independence driving provides is important for everyone, including

members of the deaf community.<sup>2</sup> Driving allows deaf individuals to access work, social events, and school, and to be fully integrated into their communities.

Deaf individuals have been driving safely in this country for over a century, and all fifty states permit deaf individuals to drive, provided they meet the requirements for issuance of a license. Driver education frequently is included among these requirements and multiple types of reasonable modifications can be made to provide deaf individuals with meaningful access to such courses. Here, the Texas Education Agency (“TEA”) has the authority to make such reasonable modifications.<sup>3</sup> In fact, the TEA is the only agency empowered to license driver education schools and to approve course materials used for driver education courses, which are mandatory in Texas for individuals who are twenty-five years of age and under. Despite such authority, the TEA has failed to take any steps to

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<sup>2</sup> While there are varying degrees of hearing loss, this brief is focused on the needs of individuals encompassed within Petitioner’s complaint and proposed class definition, who are “profoundly deaf individuals.” Pet’rs’ Br. on the Merits at 8, *Ivy v. Morath*, No. 15-486.

<sup>3</sup> The State of Texas continues to have such authority following the transfer of such authority to the Texas Department of Licensing and Regulation. *See* 2015 Tex. Gen. Laws 3624. As described in Petitioner’s Brief, this change had no effect on the substantive portions of the Texas Education Code at issue and for ease of understanding, and in accordance with Petitioner’s Brief, *Amici* will continue to refer to the TEA as the relevant agency.

ensure its driver education program is operated in a manner consistent with Title II of the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12131 *et seq.*, and Section 504 of the Rehabilitation Act of 1973 (“Section 504”), 29 U.S.C. § 794.<sup>4</sup>

The purpose of the ADA is “to provide “clear, strong, consistent, enforceable standards” and “to “ensure that the Federal Government plays a central role in enforcing” these standards “on behalf of people with disabilities.” 42 U.S.C. § 12101 (b)(2), (b)(3). In enacting the ADA, Congress found that “the Nation’s proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency” and that “the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to ... pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of

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<sup>4</sup> As the Fifth Circuit opinion in this case noted, with the exception of the requirement that an entity receive federal funding to fall within Section 504’s coverage, Title II of the ADA and Section 504 “are judged under the same legal standards, and the same remedies are available under both Acts.” *Ivy v. Williams*, 781 F.3d 250, 254 (5th Cir. 2015) (citing *Kemp v. Holder*, 610 F.3d 231, 234 (5th Cir. 2010) (per curiam)); *see also Bragdon v. Abbott*, 524 U.S. 624, 632 (1998) (“[T]he ADA... grant[s] at least as much protection as provided by the regulations implementing the Rehabilitation Act.”) To avoid unnecessary repetition, *Amici* focus the arguments herein on Title II of the ADA, but the analysis applies equally to Petitioners’ claims under Section 504.

dollars in unnecessary expenses resulting from dependency and nonproductivity.” *Id.* § 12101(a)(7), (8). Pursuant to this mandate, Title II of the ADA requires public entities to ensure people with disabilities are not “excluded from participation in” or “denied the benefits of the services, programs, or activities of a public entity” or otherwise discriminated against by such entity. *Id.* § 12132.

The TEA can, and must, take multiple actions to ensure Texas’s driver education program is administered in an accessible manner. These actions include, but are not limited to: (1) requiring course materials to include accessibility features such as captioning for videos; (2) educating driver education schools about the rights of deaf individuals under the ADA; (3) adopting policies requiring driver education schools to agree to provide legally required auxiliary aids and services to receive approval; and (4) using its enforcement and disciplinary powers to respond to complaints and, where needed, revoke its approval of schools that are failing to provide required accommodations. *See* Tex. Educ. Code § 1001.051 (“The department has jurisdiction over and control of driver training schools ...”); § 1001.303 (“The department shall renew or cancel ... license[s]”); §§ 1001.451-1001.455 (outlining prohibited practices and disciplinary actions.) The TEA does not dispute that it could take these actions. Instead the TEA claims that, despite its extensive power and control over driver education, it is not legally obligated to take such actions to ensure people with disabilities can access driver education. The TEA’s argument, and the Fifth Circuit’s decision, would limit the ability of deaf individuals to obtain drivers licenses

and sanction discrimination against the deaf community. For these reasons, *Amici* urge the Court to reverse the decision of the United States Court of Appeals for the Fifth Circuit holding that, despite the TEA's pervasive involvement in state-mandated, driver education, driver education is not a "service, program, or activity" of the TEA and therefore the TEA has no obligations under Title II of the ADA or Section 504.

## ARGUMENT

### **I. Deaf Individuals Must Not Be Excluded from Driving, Which Is Vital to Accessing Employment, Education, Living Independently, and Participating in Community Life.**

The ability to drive is fundamental to American life, as reflected in the fact that it is heavily regulated at the federal and state levels. Driving is especially critical for deaf individuals to function independently and to be fully integrated into society. Moreover, deaf individuals have been successfully driving since the widespread introduction of the automobile almost a century ago, and multiple thorough studies have established that deaf drivers pose no more of a safety risk than hearing drivers do.

#### **A. Driving Is Fundamental to Functioning Independently in Society.**

Driving is a powerful symbol of independence and a necessary part of everyday life. A driver's license is fundamental to ensuring access to employment,

education, social, recreational, and other opportunities. This is particularly true in rural areas without significant public transportation; in these areas driving is critical to accessing public services and to an individual's ability to function as a productive member of society. Driver education similarly is a key part of ensuring all drivers, including those who are deaf, are safe drivers.

Many individuals rely on their ability to drive to maintain employment, and deaf people are no exception. Driving is critical for the deaf community, which is under-employed compared to the hearing population. According to the most recent findings from the U.S. Census Bureau, only 50.7% of individuals ages 18-64 with hearing disabilities are employed, compared to 75.4% of individuals without disabilities. U.S. Census Bureau, 2014 American Community Survey, 1-Year Estimates, American FactFinder, Table B18120, [http://factfinder.census.gov/bkmk/table/1.0/en/ACS/14\\_1YR/B18120](http://factfinder.census.gov/bkmk/table/1.0/en/ACS/14_1YR/B18120). Many jobs require a drivers' license and/or may not be accessible by existing public transportation. Additionally, deaf individuals are represented disproportionately in certain fields that rely heavily on driving, such as service technicians, and as drivers for Uber and Lyft taxi services. Federal, state, and local governments all spend significant monies on vocational programs to promote employment of deaf individuals. *See, e.g.*, U.S. Dep't of Ed., Vocational Rehabilitation State Grants Funding Status, <http://www2.ed.gov/programs/rsabvrs/funding.html> (noting over three billion dollars in spending on vocational

rehabilitation in 2015 and 2016). Removing unnecessary barriers to employment is critical to fulfilling employment goals and reducing the reliance of individuals who are deaf or hard of hearing on expensive government programs such as the Social Security Disability Insurance and Supplemental Security Income programs.

Access to a driver's license not only removes unnecessary barriers to employment but also barriers to educational, religious, social, and other recreational opportunities. Without a license, all students, including those who are deaf, face barriers to accessing educational opportunities. Unnecessary impediments to accessing community colleges and other places of higher education, in particular, decrease the likelihood that deaf individuals can gain the skills needed to obtain employment and achieve financial independence. Additionally, obtaining a driver's license is an important part of transitioning into adulthood and the lack of a driver's license can be socially stigmatizing. Finally, not being able to drive can isolate individuals at home, cutting off social opportunities and segregating them from their neighbors and communities.

**B. The Fundamental Role of Driving in Society Is Reflected in the Fact It Is Heavily Regulated by Governmental Agencies.**

The governmental interest in driving, and driver education, is expressed through the myriad state and federal requirements related to the safety of our

roads and highways. All fifty states have laws in place regulating the application process and issuance of driver licenses. Automobile Association of America, Digest of Motor Laws, Driver's License Issuance/Application, <http://drivinglaws.aaa.com/tag/drivers-license-issuance-application/>. All aspects of driving—from road conditions to vehicle specifications to highway safety—are regulated by the U.S. Department of Transportation through a variety of federal agencies, including the National Highway Traffic Safety Administration, Federal Motor Carrier Safety Administration, and Federal Highway Administration. At the state level, driving is further regulated by state departments of motor vehicles and transportation, as well as state education agencies. These entities collectively work to ensure public safety through the creation and implementation of regulatory schemes outlining requirements for drivers generally, including requirements for obtaining a driver's license and the provision of driver education.

Driver education has been taught in the United States for over 100 years. Neil Chaudhary, et. al. *Driver Education Practices in Selected States*, Report No. DOT HS811420, National Highway Traffic Safety Administration, July 2011 ("NHTSA Report"). In particular, driver education and related curricula commonly are regulated by the state entity traditionally charged with oversight of educational curricula and governed by the relevant state education code. *See* Tex. Educ. Code §§ 1001.001 *et seq.*; *Jackson v. Gourley*, 105 Cal. App. 4th 966, 973–74 (2003) (finding DMV could not refuse certificate of completion for private school correspondence course

that complied with relevant education code provisions); *Prince George's Cty. Educators' Ass'n, Inc. v. Bd. of Educ. of Prince George's Cty.*, 486 A.2d 228, 232 (Md. Ct. Spec. App. 1985), *aff'd*, 522 A.2d 931 (Md. 1987) (noting "Board of Education...had final control over the program and rules and regulations for the Driver Education School"); *Sharp v. Huron Valley Bd. of Ed.*, 112 Mich. App. 18, 24, (Mich. Ct. App. 1981) (concluding "section requiring local school boards to offer driver education courses to eligible students is consistent with the broad general safety purposes of the Michigan Vehicle Code").

Overall, twenty-nine states require some form of driver education and at least fifteen provide a statewide curriculum. NHTSA Report at 8. The NHTSA Report further looked at driver education materials in ten states and found that seven of those states, including Texas, require driver education prior to licensure and have a statewide curriculum. NHTSA Report at 3. The heavy involvement of state actors in driver education demonstrates its importance to the community and the public nature of driver education programs.

### **C. Deaf Individuals Have Been Safely Driving in America for Nearly a Century.**

Deaf individuals have been driving since the use of personal automobiles became widespread in the 1920's. Jack R. Gannon, *Deaf Heritage: A Narrative History of Deaf America*, at 166 (1981). Although initially a few states attempted to refuse drivers'

licenses to deaf applicants, the NAD, through its Automobile Legislation Committee, successfully advocated on behalf of deaf individuals to prevent the enactment of discriminatory laws. *Id.* at 169. NAD's efforts were rewarded in the following decade, as evidence began to accumulate demonstrating deaf drivers' positive safety record. *Id.*

More recently, a 2008 report presented to the Federal Motor Carrier Safety Administration, or FMCSA, by the ECRI Institute ("2008 ECRI Report") found that "evidence from the private driver license holder population does not support the contention that individuals with hearing impairments are at an increased risk for a crash." Price, N., Tiller, M.; Reston, J.; & Tregear, S., "Hearing, Vestibular Function; and Commercial Motor Vehicle Driving Safety," at 3, presented to FMCSA on August 26, 2008, [http://ntl.bts.gov/lib/30000/30400/30459/Hearing\\_DOT-FMCSA\\_-\\_FINAL\\_8-29-08.pdf](http://ntl.bts.gov/lib/30000/30400/30459/Hearing_DOT-FMCSA_-_FINAL_8-29-08.pdf). Although the 2008 ECRI Report was focused on the licensing of commercial motor vehicle ("CMV") drivers, its conclusion that deaf and hard of hearing individuals do not pose an increased risk is based on data relating to private motor vehicle license holders.<sup>5</sup> *Id.* at 49.

The 2008 ECRI Report based its conclusion that deaf and hard of hearing drivers do not pose

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<sup>5</sup> *Amici* focus on the lack of safety risks posed by private motor vehicle license holders, not CMV drivers, due to the fact this litigation concerns mandatory driver education for purposes of obtaining a personal driver license, not a commercial license.

increased safety risks on a review of several prior studies. The first study the ECRI researchers reviewed is referred to as the Ivers Study. The Ivers Study was a retrospective study conducted in 1999 that reported on the incidence of crashes occurring among individuals who are deaf or hard of hearing compared to crash rates of hearing individuals. It found no evidence to support the contention that members of the first group are at an increased risk of accidents. *Id.* at 48.<sup>6</sup> The 2008 ECRI Report also reviewed two additional studies, referred to in the Report as the Gressert Study and the McClosky Study. *Id.* at 48-49. The Gressert and McClosky studies were performed in 1994 and compared two groups of drivers, drivers who had been involved in vehicular accidents and drivers who had not been involved in such accidents. *Id.*<sup>7</sup> The Gressert and McClosky studies then looked at the prevalence of deaf and hard of hearing individuals in each group and found *no* evidence that individuals who are deaf or hard of hearing are at an increased risk of accidents. *Id.* at 49-50. Finally, the 2008 ECRI Report reviewed an additional study known as the

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<sup>6</sup> Citing Ivers, R.Q., Mitchell, P., Cumming, R.G., *Sensory impairment and driving: the Blue Mountains Eye Study*, 89 *Am. J. Public Health* (Jan. 1999).

<sup>7</sup> Citing Gressert, J., Meyer, F., *Risk of automobile accidents among elderly drivers with impairments or chronic diseases*, 85 *Can. J. Public Health* 282 (Jul-Aug 1994); McCloskey, L.W., Koepsell, T.D., Wolf, M.E., Buchner, D.M., *Motor vehicle collision injuries and sensory impairments of older drivers*, 23 *Age Ageing* 267 (July 1994).

Songer Study. *Id.* at 22-24.<sup>8</sup> The Songer Study was conducted in 1993 and reviewed the conclusions of eight earlier studies. *See Id.* After comparing the findings of the Ivers, Gressert, McClosky, and Songer Studies, the 2008 ECRI Report found that evidence from the private driver's license holder population does not demonstrate that deaf and hard of hearing individuals are at an increased risk of vehicular accidents. *Id.* at 50.

The 2008 ECRI Report is important not only for its thorough and extensive findings regarding driver safety but also because deaf individuals regularly encounter pre-conceived notions and assumptions that they either do not drive or are not able to drive safely. These assumptions can create real-world barriers for deaf individuals seeking to obtain licenses when driver education schools are unprepared for their needs, such as in Texas.

## **II. The Texas Education Authority Is Required to Exercise Its Authority to Make its Driver Education Program Accessible to Deaf Individuals.**

Under the Texas Education Code, the TEA “has jurisdiction over and control of driver training schools,” and is charged with “adopt[ing] comprehensive rules governing driving safety courses” and “rules to ensure the integrity of

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<sup>8</sup> Citing Songer, T.J., et al. *Hearing disorders and commercial motor vehicle drivers*, US Dep't of Trans., Federal Highway Administration, (Mar. 1993).

approved driving safety courses and to enhance program quality.” Tex. Educ. Code §§ 1001.051, 1001.052; 1001.053(c). For an individual to provide a driver education or safety course, he or she must hold a license from the TEA. *See Id.* § 1001.201. The TEA also (a) “enforce[s] minimum standards for driver training schools,” *id.* § 1001.053(a)(2); (b) “establish[es] or approve[s] the curriculum and designate[s] the educational materials to be used in a driver education course for minors and adults,” *id.* § 1001.101(a); (c) “provide[s] minimum standards of curriculum for and designate[s] the educational materials to be used in a driver safety course for drivers younger than 25 years of age,” *id.* § 1001.111(a); (d) establishes standards for certification of driver education personnel, *see id.* § 1001.253 and (e) requires that licenses be renewed annually, *see id.* §§ 1001.301-304. Pursuant to these mandates, the TEA has broad power to ensure that driver education schools comply with federal anti-discrimination laws, and is statutorily mandated to do so. *See Id.* § 1001.204(b)(7) (requiring schools to certify they have met “all county, municipal, state, and federal regulations.”)

**A. The Texas Education Authority Is Required to Adopt Policies and Procedures to Ensure the Provision of Auxiliary Aids and Services to Comply with Title II of the ADA and Section 504.**

Deaf individuals can complete driver education courses when provided with appropriate auxiliary aids and services. 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. To fulfill this mandate, public entities must provide “appropriate auxiliary aids where necessary to afford individuals with disabilities...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).

“Auxiliary aids” is a broad term that includes many different types of accommodations depending on the individual’s needs and preferences, as well as the nature of the information being communicated. The ADA defines auxiliary aids and services to include “qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments.” 42 U.S.C. § 12103(1)(A). “Qualified interpreter” is further defined to mean an interpreter who “is able to interpret effectively, accurately, and impartially, both receptively and expressly, using any necessary specialized vocabulary,” and includes American Sign Language (“ASL”) interpreters. 28 C.F.R. § 35.104. ASL is a complete, complex language, separate and distinct from written English.<sup>9</sup> The U.S.

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<sup>9</sup> Many deaf individuals rely on ASL as their primary method of communication. Individuals who are born deaf, or who lose their hearing early in life, may lack sufficient English fluency to rely on written text and may instead communicate entirely through ASL. Videos may be made accessible to persons who are fluent only in ASL by the inclusion of a “bubble” or small

Department of Justice (“DOJ”) regulations implementing the ADA provide additional examples of “auxiliary aids and services.” including, among others:

Qualified interpreters on-site or through video remote interpreting (VRI) services; notetakers; real-time computer aided transcription services<sup>10</sup>; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning;<sup>11</sup>

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video within the larger video that shows a pre-recording of a person expressing in ASL what is being said through the audio content.

<sup>10</sup> What is listed in the regulations as “real-time computer aided transcription” has since become known as “real-time captioning,” or Communication Access Real Time Translation (“CART”). CART resembles captioning but is instantaneous and intended for live interaction, such as in a class lecture. Essentially, a person, either on location or listening by phone remotely, types what is being said and the text appears on the deaf individual’s computer screen in real-time as it is typed. The text produced by the CART service can also be projected onto a screen, combined with a video presentation to appear as captions, or otherwise made available using other transmission and display systems.

<sup>11</sup> Captioning refers to text that is displayed on a television, video screen, or other visual display. This type of auxiliary aid is familiar to most people, as captioning is provided for television shows pursuant to rules adopted by the Federal

videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing.

28 C.F.R. § 35.104.

The TEA should adopt policy language prohibiting licensed driver education schools from discriminating against individuals on the basis of their disabilities and to provide appropriate auxiliary aids and services, like those listed above, as required by the ADA. This language would be similar to language recently required by the DOJ in its settlements with private driver education schools, as well as the practices of other states. *See* DOJ Settlement Agreement with Wold Driving School, Complaint No. 202-86-9, Feb. 7, 2001, <https://www.ada.gov/wold.htm>; *Breitbach v. St. Cloud Driving Sch.*, No. 06-1222, 2006 WL 2265170, at \*2-3 (D. Minn. Aug. 8, 2006). Further, this non-discrimination language is consistent with the TEA's mandate to ensure driver education schools comply with, *inter alia*, all federal regulations including

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Communications Commission. Closed captions must match the spoken words in the dialogue and convey background noises and other sounds to the fullest extent possible. For pre-recorded videos, captions are generated based on a written transcript of the video. Once captioned, the video can be displayed with captions as often as is needed. For live video streaming, the captions may be typed live or generated using software designed specifically for captioning live videos.

those implementing the ADA discussed above. Tex. Educ. Code § 1001.204(b)(7).

To comply with the ADA, the TEA should use its power to approve and designate course materials under section 1001.101 of the Texas Education Code to require that courses be designed to be fully accessible, including requiring that any videos used in courses include appropriate captions. Other State departments, such as the Texas Department of State Health Services, currently provide information using ASL videos. Texas Department of State Health Services, West Nile Virus Videos in American Sign Language, <https://www.dshs.texas.gov/TxWestNile/ASLs/>. There is no reason why the TEA should not do the same. The TEA should also adopt requirements to ensure instructors are informed of ADA requirements and understand modification options to ensure effective communication with deaf individuals. This would be consistent with the practices of other states, such as Ohio, which provide schools with materials describing how to accommodate deaf students. *See* Information for Driving Schools, <http://www.drivertraining.ohio.gov/schools.htm>. The TEA should also coordinate with other state agencies, including the Texas Department of Assistive and Rehabilitative Services, to develop accessible course options to ensure effective communication with, and equal access to, deaf individuals. This would also be consistent with the practices of other states, such as Maryland, which ensures effective communication with deaf individuals through cooperation with the Maryland Office of the Deaf and Hard of Hearing. 2006

Annual Report, [www.odhh.maryland.gov/pdfs/ODHH-2006-Annual-Report.pdf](http://www.odhh.maryland.gov/pdfs/ODHH-2006-Annual-Report.pdf). Finally, the TEA should develop and administer a fund to offset the cost of providing an ASL interpreter and other services when needed, similar to the Communication Access Fund offered by the State Bar of Texas to reimburse attorneys for sign language interpreters and other auxiliary aids they need to serve clients with disabilities. *See* State Bar of Texas, Communication Access Fund, <https://www.texasbar.com/communicationaccess/>.

**B. The Texas Educational Authority Is Required to Exercise Its Enforcement and Licensing Authority to Ensure Driver Education Is Provided in Compliance with the ADA and Section 504.**

Texas law empowers the TEA not only to approve course materials, but also to deny, suspend, or revoke instructor licenses and driver education school applications or renewals. The TEA should exercise its existing authority to (1) reject course materials that do not meet its standards, *see* Tex. Educ. Code § 1001.101(a); (2) reject courses that do not “reasonably and adequately achieve” their stated objectives, *id.* §1001.204(b)(1); and (3) require schools to certify they have met all county, municipal, state, and federal regulations, *id.* § 1001.204(b)(7). Furthermore, the TEA can and should deny, revoke, or suspend an instructor license if the licensee does not meet statutory requirements, including those promulgated by the TEA. *See Id.* § 1001.204(b)(15) (providing the TEA authority to

require driver education schools to meet “any additional criteria required by the department”).

The TEA should wield its authority in a manner that ensures that the driver education schools it oversees are aware of the requirements of the law and take appropriate steps to comply. As part of these obligations, the TEA should require individual schools to provide the TEA with copies of all disability-related complaints and responses so that they can be assessed as part of the annual license renewal process. If, based on that documentation, the driver education school has shown a disregard for its legal obligations and the rights of individuals who are deaf or hard of hearing, the TEA should take appropriate actions, including by denying the driver school’s application for renewal or suspending the licenses of individual instructors.

## CONCLUSION

Deaf individuals have been driving safely in this country since cars have been on the road. Further, as long as driver education has been provided, deaf individuals have completed such programs without difficulty when the courses have been made accessible. The methods for accommodating deaf individuals in the context of driver education programs are straightforward and currently in use in multiple jurisdictions. Pursuant to both the spirit and the letter of the ADA, the TEA is obligated to take all the steps necessary to operate its driver education programs in a manner that comports with Title II of the ADA and Section 504. To allow the TEA to avoid these obligations would be to allow

public agencies to outsource their legal obligations even where they are designated by state law to act as gatekeepers to accessing state benefits. For these reasons, the Court should reverse the judgment of the Fifth Circuit and reaffirm the bedrock principle that public entities cannot avoid their obligations under the ADA and Section 504 by entering into licensing arrangements with discriminatory private vendors.

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