



PC-NY-0002-0001

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
DORIS CLARKSON, individually and on behalf
of others similarly situated,

Plaintiff,

-and-

JANICE WHAN, MARK BROCK, TERRYTON
HARRISON, RIIS POWELL, GLENNIS
ROBERTSON, and LARRY RANDALL,
individually and on behalf of others
similarly situated,

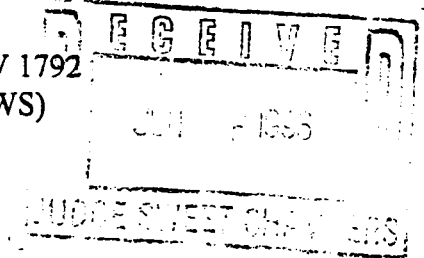
Plaintiff-Intervenors,

-against-

GLENN GOORD individually and in his capacity
as Acting Commissioner of the New York State
Department of Correctional Services, et al.,

Defendants.
-----X

91 CIV 1792
(RWS)



CONSENT JUDGMENT
AND ORDER

PLAINTIFFS Doris Clarkson, Janice Whan, Mark Brock, Terryton Harrison, Riis Powell, Glennis Robertson and Larry Randall, deaf and hard of hearing state prison inmates, commenced this action on March 15, 1991 on behalf of themselves and a class of similarly situated others, to challenge defendants' policies and practices of providing deaf and hard of hearing inmates of the New York State correctional system with access to the programs and services that are routinely accorded to hearing inmates. Plaintiffs alleged that the challenged policies and practices violate § 504 of the Rehabilitation Act, 29 U.S.C. § 794, the Americans With Disabilities Act ("ADA"), 42 U.S.C. § 12131, et seq., the eighth, ninth, and fourteenth amendments to the United States Constitution, and

42 U.S.C. § 1983.

A PLAINTIFF CLASS was certified on January 25, 1993, comprised of:

(a) all present and future deaf and hearing-impaired male inmates of the New York State Department of Correctional Services who have been, are, or will be discriminated against, solely on the basis of their disability, in receiving the rights and privileges accorded to all other inmates; and

(b) all present and future deaf and hearing-impaired female inmates of the New York State Department of Correctional Services who have been, are, or will be discriminated against, solely on the basis of their disability, in receiving the rights and privileges accorded to all other inmates.

Clarkson v. Coughlin, 145 F.R.D. 339 (S.D.N.Y. 1993) ("Clarkson II"). The sub-class of male inmates does not assert a challenge to the conditions or services provided to deaf and hard of hearing male inmates housed in the Sensorially Disabled Unit at the Eastern Correctional Facility.

PLAINTIFFS filed a motion on August 3, 1994 seeking declaratory judgment, permanent injunctive relief and summary judgment. The Court issued its Opinion on June 16, 1995 and concluded that defendants had violated plaintiffs' statutory and constitutional rights when they failed, inter alia, to provide deaf and hard of hearing inmates with sign language interpreter services and other assistive communication devices during reception, classification, educational, vocational, counseling, medical and mental health encounters and during disciplinary, grievance and parole proceedings. Clarkson III, pp. 1044-51. At that time the Court directed the parties to confer concerning appropriate remedial measures. Id. at 1052. The parties have conferred and the Court has heard their respective positions.

Nothing in this order shall be interpreted to confer upon plaintiffs more rights than they would be entitled to under § 504 of the Rehabilitation Act, 29 U.S.C. § 794 et seq., the Americans With

Disabilities Act, 42 U.S.C. § 12131 et seq., and the United States Constitution. The order shall be interpreted consistent with these laws and applicable federal regulations.

The Court finds that the relief described herein is narrowly drawn, extends no further than necessary to correct the violations of plaintiffs' federal rights as found by the Court in its Opinions in this case, and is the least intrusive means necessary to correct such violations of plaintiffs' federal rights.

Accordingly, IT IS ORDERED, ADJUDGED and DECREED by the Court:

Definitions

1. The following definitions and terms shall apply:

(a) Individual Named Plaintiffs: Doris Clarkson, Janice Whan, Mark Brock, Terryton Harrison, Riis Powell, Glennis Robertson and Larry Randall.

(b) Defendants: Glenn Goord, Acting Commissioner of the New York State Department of Correctional Services ("DOCS"); Lester Wright, Associate Commissioner and Chief Medical Officer, Raymond Broaddus, Deputy Commissioner for Program Services; Elaine A. Lord, Superintendent of the Bedford Hills Correctional Facility; Bridget Gladwin, Superintendent of Taconic Correctional Facility; James L. Stone, Commissioner of the New York State Office of Mental Health ("OMH"); Brion Travis, Chair of the New York State Board of Parole and Head of the New York State Division of Parole ("Parole"); Stephen Dalsheim, Superintendent of the Downstate Correctional Facility; Walter Kelly, Superintendent of the Attica Correctional Facility; Daniel Senkowski, Superintendent of the Clinton Correctional Facility.

(c) Deaf or Hard of Hearing Inmate: a person incarcerated by the New York State Department of Correctional Services who, because of a hearing impairment, is excluded from or

unable to participate fully in activities, privileges or programs of the New York State Department of Correctional Services, the New York State Office of Mental Health and the New York State Division of Parole which are available to all other New York state inmates.

(d) Qualified Sign Language Interpreter ("Qualified Interpreter" or "Interpreter"):

a sign language interpreter certified by the National Registry of Interpreters for the Deaf or other national or New York State credentialing authority, or a sign language interpreter who is able to interpret effectively, accurately, and impartially both receptively and expressively, using any necessary specialized vocabulary. The qualifications of an interpreter are determined by the actual ability of the interpreter in a particular interpreting context to facilitate effective communication. Except as otherwise indicated below, qualified interpreters may include inmates and staff members, including corrections officers and volunteers when their skills meet the above definition and factors such as emotional or personal involvement and considerations of confidentiality will not adversely affect their ability to interpret "effectively, accurately, and impartially" or jeopardize the safety and security of the inmate. No inmate shall be required to compromise confidentiality in medical and mental health treatment or other confidential communications solely on account of a hearing impairment. Nothing in this definition supersedes any requirement of State or federal law for use of a certified interpreter in particular settings, such as court or parole proceedings.

Notice and Assessment of Needs of Deaf and Hard of Hearing Inmates

2. Defendants DOCS, OMH and Parole shall advise all deaf and hard of hearing inmates of their right to reasonable accommodations, which may include a qualified sign language interpreter, or other auxiliary aids, services and devices to accommodate their disability, the method for requesting such accommodations, and the procedures for grieving defendants' refusal, in whole or in

part, to make necessary accommodations. The notice of advisement with respect to all three defendants may be contained in a single document. Notices shall include a list of auxiliary aids and devices, in addition to qualified sign language interpreters, which can be made available to deaf and hard of hearing inmates, as needed. The list shall include those items specified in ¶ 20, below and other items in conformance with defendants' obligations under § 504 of the Rehabilitation Act, the Americans With Disabilities Act and the United States Constitution.

3. Notice as described in ¶ 2 above shall be provided orally and in writing to inmates in the following instances: (a) upon entry into the custody of DOCS during reception and classification; (b) upon transfer of a deaf or hard of hearing inmate to another state correctional facility or to Central New York Psychiatric Center; and (c) and prior to the scheduling of a pre Board interview between an inmate and a Facility Parole Officer, and the release interview between an inmate and a panel of the Parole Board; oral provision of notice under ¶ 3(c) may be accomplished with the assistance of an inmate or volunteer interpreter, if an interpreter is necessary. Notice shall also be given in the orientation material provided to each inmate upon entry into DOCS's custody.

4. Notice as required in ¶ 2 above shall be provided: (a) where possible, through a qualified sign language interpreter; (b) by posters prominently displayed in all state correctional facilities where deaf and hard of hearing inmates will be housed and Central New York Psychiatric Center, in areas frequented by inmates, including deaf and hard of hearing inmates, such as mess halls, law libraries, television common areas, housing units, counseling, medical, psychiatric offices and satellite units, classrooms and workshops. All notices to deaf and hard of hearing inmates shall be written in consultation with plaintiffs in simple, clear language at the second grade English reading level. Signs shall be consistent with American Sign Language, including picture signs where possible.

5. Inmate requests for accommodations, interpreters and other auxiliary aids, services and devices, or requests for accommodations made on behalf of inmates, may be made orally or in writing to any person employed by DOCS or OMH, including the facility Superintendent or his/her designee. Requests for assistance or expressions of difficulty in communicating or understanding by deaf and hard of hearing inmates shall be considered a request for a reasonable accommodation and shall be acted upon by DOCS or OMH within two business days or less where necessary. DOCS and OMH shall give primary consideration to the choice of accommodation made by or on behalf of a deaf or hard of hearing inmate in making a decision whether to grant, modify, or deny the request. If a request for an accommodation is made to a DOCS or OMH employee who is not able to respond to the request, such employee shall forward the request to appropriate staff within the facility and all time frames of this paragraph shall apply. A DOCS or OMH employee shall act upon a request for a reasonable accommodation by granting the request, granting it with modifications, or denying the request. If a request made to a DOCS employee is modified or denied, the DOCS employee shall provide the inmate with a form to request a reasonable accommodation and shall advise the inmate of his/her right to renew the request for an accommodation either orally or in writing by contacting the Superintendent or his/her designee. If a request made to an OMH employee is modified or denied, the OMH employee shall provide the inmate with a form to request a reasonable accommodation and advise the patient of his/her right to renew the request for an accommodation either orally or in writing by contacting the OMH satellite unit chief or his/her designee, or the Central New York Psychiatric Center unit chief or his/her designee.

6. Upon receiving a request for accommodation, the DOCS superintendent or his/her designee shall grant the request, or if necessary, shall arrange a meeting with the deaf or hard of

hearing inmate within twenty-four hours to discuss the nature of the request and the need for the interpreter, auxiliary aids, services, or devices. The assistance of a sign language interpreter shall be provided where required to facilitate communication. The superintendent or his/her designee shall render a decision on a request for a reasonable accommodation within one week of receiving the request, or less where medical needs or other exigencies make it necessary. This decision shall be communicated to the inmate in writing and interpreted into sign language where necessary. If all or part of the requested accommodation cannot be made in the ordinary course of activity, the superintendent or designee shall reduce the request to writing and forward the written copy of the request for an accommodation and a copy of the facility decision as soon as it is made to DOCS's Office of Diversity Management. The inmate shall be advised of his/her right to grieve the decision within the Inmate Grievance Program (Directive 4040) as revised pursuant to ¶ 9, below, and the method for making a grievance.

7. Upon receiving a request for accommodation, the OMH satellite unit chief or his/her designee, or the Central New York Psychiatric Center unit chief or his/her designee shall grant the request, or, if necessary, shall arrange a meeting with the deaf or hard of hearing inmate within twenty-four hours to discuss the nature of the request and the need for the accommodation. The assistance of a sign language interpreter shall be provided where required to facilitate communication. The unit chief shall render a decision on a request for a reasonable accommodation within three business days of receiving the request, or less where medical needs or other exigencies make it necessary. This decision shall be communicated to the inmate in writing and interpreted into sign language where necessary. If all or part of the requested accommodation cannot be made in the ordinary course of activity, the OMH satellite unit chief or the Central New York Psychiatric Center

unit chief shall reduce the request to writing and forward the copy of the unit chief's decision as soon as it is made to the Central New York Psychiatric Center Regional Director for Community Services or the Central New York Psychiatric Center Incident Review Committee, respectively. Where the OMH satellite unit chief receives a request for accommodation regarding auxiliary aids, services, or assistive devices which are made available by DOCS pursuant to ¶ 20, he/she shall that same business day forward the request to the DOCS superintendent. With respect to such forwarded requests, DOCS will comply with the review process set forth in ¶¶ 6, 9, 10, 12.

8. Upon receiving a request for an accommodation and a copy of the unit chief's decision, the Central New York Psychiatric Center Regional Director for Community Services or the Central New York Psychiatric Center Incident Review Committee, as appropriate, will provide to the inmate and the unit chief findings and recommendations expeditiously, but in no case more than five working days, and less where medical needs or other exigencies make it necessary.

9. DOCS shall, in consultation with plaintiffs' counsel, modify the existing inmate grievance procedure to make it accessible to deaf and hard of hearing inmates. Deaf and hard of hearing inmates shall be advised of their right to grieve any decision with respect to a request for a reasonable accommodation, and shall be advised in simple, clear language of the method of filing a grievance. Inmates shall be provided with access to sign language interpreters, and other auxiliary aids, services and assistive devices as described in ¶ 20 to facilitate the preparation of a grievance. DOCS shall create a non-written grievance mechanism to permit deaf and hard of hearing inmates with very limited English writing and comprehension skills to access the grievance system.

10. The DOCS Director, Office of Diversity Management, shall receive copies of all decisions rendered by the superintendent or his designee on such grievances. The Director, Office

of Diversity Management or his/her designee shall have the authority to initiate a review of all denied requests for accommodations, and all denied grievances, where he/she questions the correctness of the decision. All written complaints, grievances, recommendations and correspondence by and between the Office of Diversity Management, deaf and hard of hearing inmates, and DOCS's facilities shall be maintained in a central file for five years.

11. The Central New York Psychiatric Center Director of Operations shall receive copies of any decisions rendered by the OMH satellite unit chief, his/her designee, the Central New York Psychiatric Center unit chief or his/her designee, the Central New York Psychiatric Center Regional Director for Community Services, and the Central New York Psychiatric Center Incident Review Committee. The Director of Operations shall have the authority to initiate a review of any denied requests for accommodations where he/she questions the correctness of the decision. Any written complaints, recommendations and correspondence by and between the Central New York Psychiatric Center Director of Operations, deaf and hard of hearing inmates, OMH satellite unit chiefs, Central New York Psychiatric Center unit chiefs, the Central New York Psychiatric Center Regional Director for Community Services, and the Central New York Psychiatric Center Incident Review Committee shall be maintained in a central file for five years.

12. DOCS shall keep a copy of all requests for reasonable accommodations made by deaf and hard of hearing inmate that are modified, denied, grieved through the Inmate Grievance Program (Directive 4040) or reviewed by the Director, Office of Diversity Management. These records shall be maintained indicating for each request: the name and departmental identification number of the inmate; the nature of the request; DOCS's response at the facility level, if the request is denied; the decision on any grievance, if filed; the decision on any review initiated by the Director, Office of

Diversity Management; the precise services or accommodation provided; and, where the accommodation was denied in whole or in part, the basis for the denial. These records will be maintained in the grievance office at the facility or in the central office.

13. OMH shall keep a copy of all requests for reasonable accommodations made by deaf and hard of hearing inmates that are modified, denied, or reviewed by the Central New York Psychiatric Center Director of Operations. These records shall be maintained indicating for each request: the name of the inmate; the nature of the request; OMH's response at the facility level, if the request is denied; the decision on any review by the Central New York Psychiatric Center Director of Operations; the precise services or accommodation provided; and, where the accommodation was denied in whole or in part, the basis for the denial. These records will be maintained in the Office of the Central New York Psychiatric Center Director of Operations.

14. Parole staff will give deaf and hard of hearing inmates at least seven business days notice of the pre Board interview between an inmate and a Facility Parole Officer, the parole release interview between an inmate and a panel of the Parole Board, or any rescission hearing. Inmate requests for accommodations, including requests for interpreters at these proceedings will be made orally or in writing to any employee of Parole at the facility where the inmate is located, at least five business days in advance of the scheduled interview or hearing, to permit Parole to make arrangements for obtaining the services of a qualified sign language interpreter on a per diem or other basis, or other auxiliary aids, services and devices, if such are necessary to provide reasonable accommodation. Requests for assistance or expressions of difficulty in communicating or understanding shall be considered a request for reasonable accommodation. If an interpreter, auxiliary aid, service or device is needed for the pre Board interview, Parole shall provide the same

for the Board interview. Requests for accommodations shall be acted upon within one business day. If a request for an accommodation is denied by facility parole staff, the request and the response shall be reduced to writing and forwarded by facility parole staff to Parole's designee in its Central Office within two business days. Parole's Central Office designee shall, as soon as practicable, investigate and review the facility parole staff's report, direct or conduct a face-to-face meeting to obtain additional information, if necessary, and advise facility parole staff in writing whether an interpreter or another accommodation is to be provided. Parole's Central Office designee shall maintain the facility parole staff reports and the Central Office designee response for five years. The interview or hearing will be postponed while Central Office review pursuant to this paragraph is pending. Parole will use its best efforts to complete such review quickly enough that postponements of Board release interviews to the next Board calendar are not necessary. If notice of an interview or hearing and an inmate request for accommodation occur more than seven and five business days in advance of the interview or hearing, the time periods for decision and review may also be extended but only if such extension will not cause postponement of the Board release interview.

15. DOCS shall identify on an ongoing basis all deaf and hard of hearing inmates upon entrance into DOCS's correctional facilities and shall maintain a current list of all deaf and hard of hearing inmates incarcerated in the New York State correctional system indicating the facility and unit on which each inmate is currently housed. DOCS shall, in addition, within four months from entry of Judgment and on a one-time basis, ask medical and counselor staff in each facility to supplement, review and verify the accuracy of the master list described above. OMH shall, within four months from entry of Judgment and on a one-time basis, identify all deaf and hard of hearing inmates in custody in Central New York Psychiatric Center or residing on any of its prison-based satellite units.

16. DOCS, OMH and Parole shall retain all records and files required to be kept by provisions of this Judgment for at least two years after they are made.

Assessment and Classification

17. DOCS shall develop a needs assessment form for each deaf and hard of hearing inmate which shall provide the necessary information to appropriate DOCS staff to make informed decisions with respect to reasonable accommodations needed by the inmate, housing, work/program assignments, and disciplinary measures. The needs assessment form shall be completed on all deaf and hard of hearing inmates during the classification process, and shall be revised upon any changes in the inmates' ability to communicate as a result of his/her disability. The needs assessment form shall be completed in consultation with persons with expertise in the deafness field or other personnel qualified: (a) to evaluate and determine an adequate means of communication for each deaf and hard of hearing individual; (b) to discuss the full range of auxiliary aids and devices necessary to facilitate full communication and participation in prison programs and activities; (c) to explore the educational, vocational and programmatic capabilities of the deaf and hard of hearing inmate.

18. DOCS may require inmates who identify themselves as deaf or hard of hearing to submit to an audiological examination upon assertion of a claim of disability. Audiological examinations for deaf and hard of hearing inmates shall be scheduled expeditiously so as not to delay the classification and accommodation process. Inmates may make a request for an audiological examination to a medical doctor who must determine whether one is necessary before ordering that an audiological examination be performed. No audiological examination may be performed without prior authorization by a medical doctor.

19. DOCS, OMH and Parole shall include in the relevant inmate files all information

necessary on each deaf and hard of hearing inmate to ensure continuity of sign language services, auxiliary aids and devices as deaf and hard of hearing inmates are moved from one facility, or unit within a facility, to another. For Parole purposes, such information is deemed to be the needs assessment form received by Parole from DOCS. The needs assessment form shall be reviewed and, if necessary, updated at the receiving facility at the time of transfer.

Provision of Sign Language Interpreters and Other Auxiliary Aids and Devices

20. DOCS shall make available to deaf and hard of hearing inmates the auxiliary aids, services and assistive devices necessary to facilitate full and effective participation in prison programs, activities and services. OMH shall make available to deaf and hard of hearing inmates the auxiliary aids, services and assistive devices necessary to facilitate full and effective participation in programs, activities and services provided by OMH at Central New York Psychiatric Center. DOCS shall make available to deaf and hard of hearing inmates the auxiliary aids, services and assistive devices necessary to facilitate full and effective participation in programs, activities and services provided by OMH at the OMH satellite units, with the exception of interpreter services which shall be provided by OMH. To the extent they are available in a deaf or hard of hearing inmate's facility at the time of such inmate's parole interview or hearing, DOCS shall make available to such inmate the auxiliary aids and assistive devices necessary to facilitate full and effective participation in the parole interview or hearing. Parole shall make available to deaf and hard of hearing inmates any other auxiliary aids, services and assistive devices necessary to facilitate full and effective participation in parole proceedings and shall be solely responsible for providing interpreters. The auxiliary aids, services and assistive devices may include: qualified sign language interpreters, text telephones ("TTY/TDD"), telephone amplifiers, closed caption television/VCR decoders, sound amplification and assistive

listening systems, notification systems (sound signalers, flashing/vibrating alarms), visual smoke detectors, videotext displays, hearing aids and batteries, and other items which may be required under § 504 of the Rehabilitation Act, the Americans With Disabilities Act and the United States Constitution, and federal regulations.

21. DOCS shall provide reasonable accommodations which shall include, as necessary, qualified sign language interpreters for those deaf and hard of hearing inmates who use sign language to communicate, and other auxiliary aids, services and devices where appropriate, whenever a deaf or hard of hearing inmate is a party or witness at any stage of any administrative, grievance, or disciplinary proceeding, including investigation and meetings with inmate/employee assistants; temporary release consideration; or any proceeding in which a deaf or hard of hearing inmate may be subject to any sanction, including but not limited to restrictive confinement including disciplinary or administrative segregation, voluntary or involuntary protective custody or keeplock, loss of good time, loss of privileges, loss of advancement or status in the prison classification placement, visitation privileges, change of housing placement, or any other loss of rights or privileges.

22. Parole shall provide reasonable accommodations for deaf and hard of hearing inmates for the pre-Board interview between an inmate and a Facility Parole Officer, the parole release interview between an inmate and a panel of the Parole Board, and any rescission hearing, which shall include, as necessary, qualified sign language interpreters for such inmates who use sign language to communicate, and other auxiliary aids, services and devices, where appropriate.

23. DOCS and OMH shall provide reasonable accommodations which shall include, as necessary, qualified sign language interpreters for those deaf and hard of hearing inmates who use sign language to communicate, and other auxiliary aids, services and devices where appropriate,

whenever a deaf or hard of hearing inmate requests to participate in any educational, rehabilitation, special event, employment or any other program for which he or she is otherwise eligible, including, but not limited to, vocational training, academic instruction, literacy programs, General Equivalency Degree classes, alcohol and substance abuse rehabilitation, alternatives to violence training, and sexual offender rehabilitation.

24. DOCS and OMH shall provide reasonable accommodations which shall include, as necessary, qualified sign language interpreters for those deaf and hard of hearing inmates who use sign language to communicate, and other auxiliary aids, services and devices where appropriate, whenever a deaf or hard of hearing inmate requests, and is eligible for, medical, dental, audiological, psychological, or psychiatric treatment and when communication between patient and medical personnel is critical to the efficacy of treatment or the safety or security of the inmate. Due to the need to maintain confidences in these contexts, otherwise qualified inmate interpreters may not act as sign language interpreters in these settings except in case of an emergency where the failure to communicate would result in serious injury, illness, or death. When services are rendered outside of defendants' facilities, DOCS or OMH shall promptly notify the outside provider of the need for a qualified sign language interpreter at the site of service delivery.

25. DOCS and OMH shall provide reasonable accommodations which shall include, as necessary, qualified sign language interpreters for those deaf and hard of hearing inmates who use sign language to communicate, and other auxiliary aids, services and devices where appropriate, whenever a deaf or hard of hearing inmate has counseling sessions and where effective communication is required, and at every stage of the preparation of the inmate's classification, programming and discharge planning, including educational, vocational and intelligence testing.

Parole shall provide reasonable accommodations to deaf and hard of hearing inmates where Parole staff is involved in inmate discharge planning. Where either the inmate or the counselor seeks to discuss information which is confidential in nature otherwise qualified inmate sign language interpreters may not interpret in these settings. Where inmates meet in a group setting and are required to keep confidential the discussions of the group, inmates who are qualified sign language interpreters may assist the deaf or hard of hearing inmate. The inmate interpreter is also bound to keep the matters discussed by the group confidential.

26. DOCS, OMH, and Parole may fulfill their obligations under this decree by providing one or more qualified interpreter(s) for a group of inmates in any job training, vocational, rehabilitative or educational program, provided that the number of qualified interpreters is sufficient to provide each deaf or hard of hearing inmate with meaningful access to appropriate services.

27. DOCS and OMH shall provide qualified sign language interpreters in each facility in which an inmate is housed who requires access to a sign language interpreter for effective communication. When deaf or hard of hearing inmates who require sign language interpreter services for effective communication are received in reception facilities, including but not limited to the Downstate Correctional Facility for men and the Bedford Hills Correctional Facility for women, DOCS and OMH shall provide qualified interpreters in these facilities, too. Qualified sign language interpreters shall be available to deaf and hard of hearing inmates in sufficient numbers to ensure that deaf and hard of hearing inmates who require sign language interpreter services to communicate have ready access to qualified interpreters whenever necessary and as provided in §§ 20-25.

28. Within one year of entry of Judgment, DOCS shall establish for deaf and hard of hearing female inmates a unit or program in a women's facility with services comparable to those

available for deaf and hard of hearing male inmates in the Sensorially Disabled Unit ("SDU") at the Eastern Correctional Facility.

29. Under no circumstances shall an inmate's transfer from or inability to be transferred to the SDU at the Eastern Correctional Facility or any other special unit for deaf and hard of hearing inmates provide the basis for the denial of any accommodation otherwise available to deaf and hard of hearing inmates pursuant to this Judgment. Nothing herein shall be construed to limit DOCS's discretion either to deny an inmate's request for transfer to another facility or to transfer an inmate to a specific facility.

30. Where appropriate, deaf and hard of hearing inmates shall be provided with necessary hearing aid(s) and the batteries and maintenance service needed to keep the hearing aid(s) operative at all times. An inmate's access to his/her hearing aid(s) and batteries shall not be unreasonably restricted by DOCS or OMH.

31. DOCS shall provide deaf or hard of hearing inmates in all DOCS facilities and in all OMH satellite units with access to closed caption television and VCR decoders and access to a television on which they may view captioned television in the same amount and duration as hearing inmates. OMH shall provide deaf or hard of hearing inmates in Central New York Psychiatric Center with access to closed caption television and VCR decoders and access to a television on which they may view captioned television in the same amount and duration as hearing inmates.

32. DOCS shall provide deaf or hard of hearing inmates in all DOCS facilities and in all OMH satellite units with access to a text telephone ("TTY/TDD"), and shall afford access in the same amount and with no additional restrictions to place telephone calls using this device as is afforded to hearing inmates. OMH shall provide deaf or hard of hearing inmates in Central New York Psychiatric

Center with access to a TTY/TDD, and shall afford access in the same amount and with no additional restrictions to place telephone calls using this device as is afforded to hearing inmates. DOCS and OMH shall ensure that deaf and hard of hearing inmates who require a text telephone to communicate by telephone have access to the National Relay System, a network of operators who facilitate communication between persons who use TTY/TDDs and persons who do not have text telephone equipment. DOCS and OMH will also arrange with the National Relay System to ensure that deaf and hard of hearing inmates have access to outgoing telephone calls, including placement of collect calls. In addition, to the extent that defendants limit the duration of inmate telephone calls, double the amount of allotted time per telephone call shall be provided to users of text telephones because of the increased time it takes to communicate through text telephones and/or the deaf relay system.

33. DOCS shall provide deaf or hard of hearing inmates in all DOCS facilities and in all OMH satellite units who can utilize telephones with the assistance of a handset telephone amplifier or another assistive device with access to a telephone with such an amplifier or device, and afford access to place telephone calls in the same amount and duration as is available to hearing inmates and with no additional restrictions or procedures impeding access to the telephone amplifier or other additional device. OMH shall provide deaf or hard of hearing inmates in Central New York Psychiatric Center who can utilize telephones with the assistance of a handset telephone amplifier or another assistive device with access to a telephone with such an amplifier or device, and afford access to place telephone calls in the same amount and duration as is available to hearing inmates and with no additional restrictions or procedures impeding access to the telephone amplifier or other additional device.

34. DOCS and OMH shall ensure that in areas under their control in which any deaf or

hard of hearing inmate resides, sleeps, works, eats, exercises, attends classes or can otherwise be expected to be present, visual alarms or warning systems or, where equally effective, other visual or manual means of notifying deaf or hard of hearing inmates of emergencies, counts, program changes, or other matters of which the inmate should be informed shall be maintained consistent with the rules governing modifications to existing correctional facilities contained in the Architectural and Transportation Barriers Compliance Board, Americans with Disabilities Act Accessibility Guidelines for Building and Facilities: State and Local Government Facilities, Interim Final Rule, 36 C.F.R. Part 1191, 59 Fed. Reg. 31676 - 31805 (June 20, 1994) ("ADAAG") and any subsequent revisions to the ADAAG.

35. DOCS shall ensure that oral announcements and commands, whether through the Public Address system, roll call, or otherwise, shall be communicated alternatively to deaf and hard of hearing inmates in a manner which can be understood by the deaf or hard of hearing inmate. No deaf or hard of hearing inmate shall be disciplined for failing to obey an oral order or rule which has not been communicated alternatively, in a manner which can be understood by the deaf or hard of hearing inmate. This policy shall be incorporated into a DOCS directive regarding disciplinary proceedings and shall be promulgated to all employees.

Education and Training of Staff

36. DOCS, OMH and Parole shall incorporate the terms and procedures of this order in one or more policy directive(s) and shall include all procedures in all relevant training manuals for employees prepared after the date of this order. Defendants shall also post or distribute the policy directive(s) incorporating the terms of this order in each facility in the manner in which all revisions to procedures are posted or distributed.

37. DOCS, OMH and Parole shall provide training to staff of a housing unit or medical, mental health, work or program site, who have direct contact with deaf or hard of hearing inmate(s). Staff shall be trained (1) on procedures to identify and process requests by or on behalf of deaf and hard of hearing inmates for sign language interpreter services, auxiliary aids, services and devices; (2) to recognize that a request for assistance or expression of difficulty in communicating or understanding by an inmate shall be treated as a request for a reasonable accommodation; (3) in the different types of communication systems that deaf and hard of hearing persons use; (4) on the nature of communication problems experienced by deaf and hard of hearing inmates; (5) on the function of such common auxiliary aids and devices as text telephones, the deaf relay system, flashing alarms and closed captioned television decoders. Defendants shall submit to the Court and plaintiffs' counsel a proposed schedule, plan and curriculum for complying with these training requirements within two months of entry of Judgment.

38. DOCS shall modify the education and employment descriptions in DOCS's Program Services Manual, Exhibit 4 to Plaintiffs' 3(g) Statement, to reflect the provisions of this Order.

Self-Evaluation

39. Within six months from the date of entry of this Judgment, DOCS shall complete the program self-evaluation required by the ADA. This shall include an evaluation of inmate programs, services and the portion of the physical plant used by inmates.

Expungement of Records

40. Within four months from entry of Judgment, DOCS and OMH shall provide to plaintiffs' counsel a list of all deaf and hard of hearing inmates within DOCS's custody and within OMH's custody at the Central New York Psychiatric Center, pursuant to ¶ 15, above, including

identification numbers and addresses for all inmates. Within eight months from entry of Judgment, plaintiffs' counsel shall provide defendants' counsel with the names of the deaf and hard of hearing inmates from that list who seek review of their files to determine whether they are entitled to have disciplinary infractions which were incurred on or after March 15, 1991 expunged from their files either because (a) plaintiffs were charged with failure to obey an order that the inmate did not understand due to a hearing loss or communication problem, or (b) plaintiffs were denied access to qualified sign language interpreters, auxiliary aids, services, or devices necessary in the disciplinary hearing process. DOCS shall review the misbehavior reports and any resulting disciplinary procedures and, where necessary, expunge all such records and restore all lost privileges and good time, or reinstitute charges and provide all necessary reasonable accommodations during new disciplinary proceedings. No additional punishment may be imposed on inmates subjected to rehearing. In the event either that a deaf or hard of hearing inmate who was in DOCS's custody within twelve months from entry of Judgment (a) becomes known to DOCS and was not included on the initial list of inmates provided to plaintiffs' counsel, or (b) is scheduled for a Parole Board hearing prior to completion of the steps identified above, DOCS shall review the files of such deaf and hard of hearing inmates and expunge all record of disciplinary infractions from the inmate's files according to the standard identified above. Each deaf and hard of hearing inmate whose file was reviewed shall be provided with notice in writing of DOCS's decision regarding the expungement of his/her records and crediting of good time. Any inmate who was denied parole release, and who subsequently receives a notice of expungement pursuant to this order of a disciplinary infraction which was considered by the Parole Board at the time that parole was denied, may request a full board case review and de novo parole release interview so that the Parole Board may make a release

decision without reference to the expunged disciplinary infraction(s).

Timing

41. Within thirty days of entry of judgment, the individual named plaintiffs and the one affiant, Joanne Ripic, shall be provided with ongoing and regular access to sign language interpreters, auxiliary aids and devices as enumerated in this Judgment.

42. All other provisions of this Judgment shall be implemented no later than four months after entry of Judgment, unless otherwise specifically provided.

Monitoring

43. Commencing four months after entry of Judgment, and every four months thereafter for a period of five years, DOCS, OMH and Parole shall provide plaintiffs' counsel with copies of all documents, statistics, data and reports kept by DOCS, OMH and Parole pursuant to §§ 6-8, 10-15, above, and for each paragraph (§) a report summarizing the data required to be kept pursuant that paragraph for the relevant period.

44. Commencing four months after entry of Judgment and once a year for five years thereafter, DOCS and OMH shall provide plaintiffs' counsel with the names of all persons acting on defendants' behalf as sign language interpreters, and shall state for each individual: their qualifications as an interpreter, including their sign language proficiency, the standards used to assess their proficiency and whether defendants believe that they meet the definition of qualified interpreter; the schedule worked as a sign language interpreter for DOCS and OMH; the nature of their relationship with DOCS and OMH (e.g., employed by defendant as sign language interpreter, employed by defendant as corrections officer or counselor but also used to interpret, independent contractor, inmate, volunteer); salary and/or reimbursement structure, indicating where interpreter is not

remunerated for services.

45. Commencing four months after entry of Judgment and once a year for five years thereafter, Parole shall provide plaintiffs' counsel with the following information for each instance in which Parole provides an interpreter as a reasonable accommodation pursuant to this Judgment: the name of the interpreter and/or the name of the agency providing the interpreter, the interpreter's qualifications as stated by the agency providing the interpreter, the location and date that the interpreter acted on Parole's behalf, the name and NYSID or DIN number for the inmate for whom services were provided, and the nature of the interaction for which interpreter services were provided (e.g., interview with Parole Officer, Board interview, hearing), and the reimbursement rate or amount as set forth on the payment voucher.

46. Commencing four months after entry of Judgment and once a year for five years thereafter, DOCS shall provide plaintiffs' counsel with the names of all persons acting on defendants' behalf to evaluate and assess the communication and accommodation needs of each deaf and hard of hearing inmate during any classification/program placement process. Defendants shall state for each individual: the qualifications to perform the required tasks, including proficiency in sign language(s); the hours worked on behalf of defendants; the nature of their relationship with defendants (e.g., employed by defendant as a counselor or classification specialist, employed by defendant in another capacity, independent contractor, inmate, volunteer); salary and/or reimbursement structure, indicating where not remunerated for services.

47. Upon fifteen business days' notice, DOCS, OMH and Parole will produce for plaintiffs' counsel, at defendants' expense, one copy of any documents or records required to be maintained by this Judgment, until further order of the Court.

48. Plaintiffs shall be permitted to obtain other records or information relevant to monitoring and enforcement of this Judgment, through the discovery provisions of the Federal Rules of Civil Procedure. Plaintiffs shall be permitted on reasonable notice to inspect defendants' filing system for the documents required to be kept by this Judgment.

49. Plaintiffs' counsel shall keep confidential any information contained in these documents about an inmate's medical or psychiatric condition, enemies in prison, or any information affecting the inmate's safety or security. Distribution of documents containing such information shall be limited to employees of The Legal Aid Society and any individuals, such as outside counsel or trial experts, whom The Legal Aid Society has a need to contact for assistance in enforcing this order. The Legal Aid Society will show documents containing such information to class members only to the extent necessary for enforcement of this order except that no clinical information maintained by OMH shall be shown to class members without The Legal Aid Society first informing OMH of its intention to do so in order that OMH may comply with the provisions of New York State Mental Hygiene Law, § 33.16(c). The Legal Aid Society shall not give custody of such documents to inmates and shall not show any documents containing such information to class members except pursuant to the provisions of § 33.16(c).

Attorney Fees and Costs

50. DOCS, OMH and Parole shall pay to plaintiffs' counsel as reasonable attorney's fees and costs an amount to be agreed upon by the parties or, if no agreement is reached, determined by the Court. Plaintiffs shall have ninety days from entry of Judgment to submit a fee motion to the Court.

Retention of Rights

51. Nothing in this Order prohibits defendants from exercising their rights under the Prison Litigation Reform Act of 1995, including the reporting provisions, and nothing prohibits plaintiffs from challenging any provision of the Prison Litigation Reform Act of 1995 as violative of the Constitution or any other federal law.

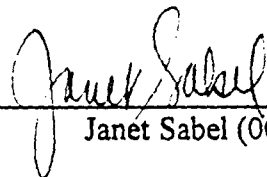
Compliance

52. In an effort to avoid motions for contempt and enforcement, defendants DOCS, OMH and Parole shall identify by title an ombudsperson responsible for handling requests for accommodations made by plaintiff class members through class counsel. Such requests shall be acted upon within fifteen days of receipt of a written request by plaintiffs' counsel, unless more expeditious relief is required. Plaintiffs' counsel must be kept apprised of the names, telephone numbers, and addresses of each ombudsperson for five years after entry of this order.

Respectfully Submitted,

For Plaintiffs:

The Legal Aid Society
Civil Appeal & Law Reform Unit
Scott Rosenberg, Director of Litigation
Janet Sabel, Of Counsel
841 Broadway, 3rd Floor
New York, New York 10003
212-477-5010 ext. 250

By: 
Janet Sabel (0060)

Proskauer Rose Goetz Mendelsohn
William Hellerstein
1585 Broadway
New York, New York 10036
212-969-3125

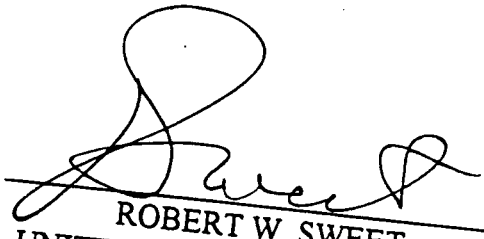
For Defendants:

Dennis Vacco
New York State Attorney General
Ronald Turbin, Deputy Bureau Chief
Charles F. Sanders, Section Chief
Jeanne Lahiff, Acting Section Chief
Valerie Singleton, Acting Section Chief
Assistant Attorney Generals
New York State Department of Law
120 Broadway, 24th Floor
New York, New York 10271
212-416-8641

By: 

Jeanne Lahiff

IT IS HEREBY ORDERED.


ROBERT W. SWEET
UNITED STATES DISTRICT JUDGE

Dated: New York, New York
June 6, 1996