

FILED _____ ENTERED _____
 LODGED *MB* RECEIVED _____
 JAN 08 1998 MR
 AT SEATTLE
 CLERK U.S. DISTRICT COURT
 WESTERN DISTRICT OF WASHINGTON
 BY _____ DEPUTY

MB
 FILED _____ ENTERED _____
 LODGED _____ RECEIVED _____
 FEB 10 1998
 AT SEATTLE
 CLERK U.S. DISTRICT COURT
 BY _____ WESTERN DISTRICT OF WASHINGTON DEPUTY

UNITED STATES DISTRICT COURT
 WESTERN DISTRICT OF WASHINGTON
 AT SEATTLE

10	SEAN G. DUFFY and CHARLES)	
11	ATKINS, on behalf of themselves and all)	
12	others similarly situated,)	No. C92-1596R
)	No. C93-637R
13	Plaintiffs,)	
14	vs.)	PLAINTIFFS' CONSOLIDATED
)	COMPLAINT
15	CHASE RIVELAND, JOSEPH)	CLASS ACTION
16	LEHMAN, JAMES SPALDING, TOM)	
17	ROLFS, DAVE SAVAGE, and CRAIG)	
18	YOST, in their personal and official)	
19	capacities; WASHINGTON)	
20	DEPARTMENT OF CORRECTIONS, a)	
	public entity,)	
	Defendants.)	

I. INTRODUCTION

1. This action arises out of the failure of officials of the Washington Department of Corrections (DOC) to accommodate the special needs of plaintiffs Sean Duffy, Charles Atkins, and other deaf and hearing impaired persons in DOC custody. Plaintiffs bring this action to redress this failure under (i) the Americans with Disabilities Act of 1990 (ADA), (ii) the Rehabilitation Act of 1973, (iii) 42 U.S.C. § 1983, (iv) the United States

1 Constitution, and (v) Wash. Rev. Code 2.42.120.

2 **II. JURISDICTION AND VENUE**

3
4 2. This Court has jurisdiction over plaintiffs' federal law claims pursuant to 28
5 U.S.C. § 1331(a)(3) and (4) and 29 U.S.C. § 794a. The Court has supplemental jurisdiction
6 over plaintiffs' state law claim pursuant to 28 U.S.C. § 1367(a).

7 3. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 and 1392.

8 **III. PARTIES**

9
10 4. Plaintiff Sean Duffy has been incarcerated by DOC since 1983. During this
11 time, he has been an inmate at (i) Washington Corrections Center at Shelton, Washington
12 (WCC), (ii) McNeil Island Corrections Center, including the McNeil Island Minimum
13 Custody Annex, (iii) Indian Ridge Corrections Center, and (iv) Twin Rivers Corrections
14 Center. He is currently incarcerated at the Washington State Reformatory in Monroe,
15 Washington (WSR). He has been fully deaf and mute since childhood. As a prisoner in the
16 custody of DOC, Mr. Duffy is subject to being transferred at any time to any DOC facility
17 that houses male prisoners.

18
19 5. Plaintiff Charles Atkins has been incarcerated by DOC since 1992. During
20 this time, he has been incarcerated at WCC and at the Washington State Penitentiary (WSP).
21 He is currently incarcerated at the Twin Rivers Corrections Center (TRCC). He has been
22 fully deaf and mute since early childhood. As a prisoner in the custody of DOC, Mr. Atkins
23 is subject to being transferred at any time to any DOC facility that houses male prisoners.

24
25 6. Defendant DOC manages and operates a number of correctional facilities in
26 Washington. DOC (i) receives federal financial assistance and therefore falls within the
27 purview of Section 504 of the Rehabilitation Act, and (ii) is a public entity within the
28

1 purview of the ADA.

2 7. Defendant Chase Riveland was Secretary of DOC. In this capacity he was
3 required to exercise all powers and perform all duties prescribed by law with respect to the
4 administration of adult correctional programs by DOC. Mr. Riveland had authority to
5 appoint and remove subordinate officers and other employees of DOC. He also had control
6 over fiscal concerns of the DOC, including the power to procure federal financial assistance
7 and to direct and monitor the disbursement of such funding for all inmate programs to ensure
8 that they are accessible to persons with disabilities. Mr. Riveland is sued in his personal and
9 official capacities.
10

11 8. Defendant Joseph Lehman is Secretary of DOC. In this capacity he is
12 required to exercise all powers and perform all duties prescribed by law with respect to the
13 administration of adult correctional programs by DOC. Mr. Lehman has authority to appoint
14 and remove subordinate officers and other employees of DOC. He also has control over
15 fiscal concerns of the DOC, including the power to procure federal financial assistance and
16 to direct and monitor the disbursement of such funding for all inmate programs to ensure that
17 they are accessible to persons with disabilities. Mr. Lehman is sued in his personal and
18 official capacities.
19

20 9. Defendant James Spalding was Director of the Division of Prisons of DOC.
21 In this capacity he was responsible for the operation of DOC facilities. Mr. Spalding is sued
22 in his personal and official capacities.
23

24 10. Defendant Tom Rolfs was Director of the Division of Prisons of DOC. In this
25 capacity he was responsible for the operation of DOC facilities. Mr. Rolfs is sued in his
26 personal and official capacities.
27

1 11. Defendant Dave Savage is DOC Deputy Secretary for the Office of
2 Correctional Operations. In this capacity he is responsible for the operation of DOC
3 facilities. Mr. Savage is sued in his personal and official capacities.
4

5 12. Defendant Craig Yost is an employee of DOC and has been Mr. Duffy's
6 classification counselor at WSR for several years. Mr. Yost is sued in his personal and
7 official capacities.

8 **IV. STATUTORY SCHEME**

9 13. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, provides that
10 no qualified handicapped individual, solely by reason of his or her handicap, shall be
11 excluded from participation in, denied the benefits of, or subjected to discrimination under
12 any program or activity operated by a recipient of federal funding assistance.
13

14 14. The Department of Justice administrative regulations implementing Section
15 504, 28 C.F.R. § 42.503, provide in part:
16

17 A recipient that employs fifteen or more persons shall provide appropriate
18 auxiliary aids to qualified handicapped persons with impaired sensory, manual
19 or speaking skills where a refusal to make such provision would
20 discriminatorily impair or exclude the participation of such persons in a
program receiving Federal financial assistance. Such auxiliary aids may
include brailled and taped material, qualified interpreters, readers, and
telephonic devices

21 28 C.F.R. § 42.503(f).

22 15. Title II, subtitle A, of the ADA, effective January 26, 1992, prohibits all state
23 or local governments or any department, agency or other instrumentality thereof from
24 discriminating against qualified individuals on the basis of a disability. 42 U.S.C.
25

26 §§ 12131-12133. Title II provides:

27 Subject to the provisions of this subchapter, no qualified individual with a
28 disability shall, by reason of such disability, be excluded from participation in or be

1 denied the benefits of the services, programs, or activities of a public entity, or be
2 subjected to discrimination by any entity.

3 42 U.S.C. § 12132.

4 16. The Department of Justice administrative regulations implementing the ADA
5 provide in part:

6 (a) A public entity shall take appropriate steps to ensure that communication
7 with applicants, participants, and members of the public with disabilities are as
8 effective as communications with others.

9 (b)(1) A public entity shall furnish appropriate auxiliary aids and services
10 where necessary to afford an individual with a disability an equal opportunity
11 to participate in, and enjoy the benefits of, a service, program, or activity
12 conducted by a public entity.

13 (2) In determining what type of auxiliary aid and service is necessary, a public
14 entity shall give primary consideration to the requests of the individual with
15 disabilities.

16 28 C.F.R. § 35.160. The regulations define "auxiliary aids and services" as including:

17 Qualified interpreters, notetakers, transcription services, written materials,
18 telephone handset amplifiers, assistive listening devices, assistive listening
19 systems, telephones compatible with hearing aids, closed caption decoders,
20 open and closed captioning, telecommunications devices for deaf persons
21 (TDD's), videotext displays, or other effective methods of making aurally
22 delivered materials available to individuals with hearing impairments[.]

23 28 C.F.R. § 35.104. The regulations also define a "qualified interpreter" as "an interpreter
24 who is able to interpret effectively, accurately, and impartially, both receptively and
25 expressively, using any necessary specialized vocabulary." Id.

26 17. The Fourteenth Amendment to the United States Constitution provides: "nor
27 shall any State deprive any person of life, liberty, or property, without due process of law;
28 nor deny to any person within its jurisdiction the equal protection of the laws. . . ." U.S.
Const. amend. XIV, § 1.

18. The Eighth Amendment to the United States Constitution states that "cruel and

1 unusual punishments" shall not be inflicted. U.S. Const. amend. VIII.

2 19. The Ninth Amendment to the United States Constitution states: "The
3 enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage
4 others retained by the people." U.S. Const. amend. IX.

5 20. 42 U.S.C. § 1983 prohibits actions, under color of state law, which deprive
6 individuals of rights secured by federal statute or the United States Constitution.
7

8 21. Plaintiffs' right to an interpreter under state law is set forth in Wash. Rev.
9 Code 2.42.120(1), which provides as follows:

10 If a hearing impaired person is a party or witness at any stage of a judicial or
11 quasi-judicial proceeding in the state or in a political subdivision, including but
12 not limited to civil and criminal court proceedings, grand jury proceedings,
13 proceedings before a magistrate, juvenile proceedings, adoption proceedings,
14 mental health commitment proceedings, and any proceeding in which a hearing
15 impaired person may be subject to confinement or criminal sanction, the
 appointing authority shall appoint and pay for a qualified interpreter to
 interpret the proceedings.

16 The statute defines a "qualified interpreter" as "a visual language interpreter who is certified
17 by the state or is certified by the registry of interpreters for the deaf to hold the
18 comprehensive skills certificate or both certificates of interpretation and transliteration"
19 Wash. Rev. Code 2.42.110(2).

20 **V. CLASS ACTION ALLEGATIONS**

21 22. Plaintiffs seek to maintain this action as a class action pursuant to Fed. R. Civ.
22 P. 23(a) and 23(b)(2). Plaintiffs ask the Court to certify a class consisting of all deaf and
23 hearing impaired persons who are now, or who will in the future be, committed to the
24 custody of the DOC.
25

26 23. The class is so numerous and so fluid that joinder of all class members is
27 impracticable. Based on the incidence of deafness and hearing impairment in the general
28

1 population, there are over 100 deaf and hearing impaired persons currently in the custody of
2 DOC.

3
4 24. There are questions of law and fact common to the class.

5 The common factual questions include:

6 Whether class members are denied access to qualified sign language
7 interpreters (as defined by federal law) and other auxiliary aids and assistive
8 devices in disciplinary hearings, classification proceedings, medical
9 encounters, educational programs, and other prison programs, activities, and
10 services.

11 Whether the DOC staff members and prisoners defendants sometimes ask to provide
12 interpretation services to class members are qualified sign language interpreters.

13 Whether as a result of the denial of qualified sign language interpreters and
14 other auxiliary aids and assistive devices, class members are excluded from,
15 and deprived of the benefits of, prison programs, activities, and services.

16 Whether, as defendants contend, providing qualified sign language interpreters
17 to class members is "simply impractical, and would unduly interfere with the
18 orderly operation of the institution."

19 The common legal questions include:

20 Whether the denial of access to qualified sign language interpreters and other
21 auxiliary aids and assistive devices in disciplinary hearings, classification
22 proceedings, medical encounters, educational programs, and other prison
23 programs, activities, and services violates the rights of class members under
24 the ADA and the RA, the federal Constitution, or Washington state law.

25 Whether defendants' failure to inform class members of their rights under the
26 ADA violates the ADA.

27 Whether the denial of a qualified sign language interpreter for disciplinary
28 proceedings deprives class members of liberty without due process of law, in
violation of the Fourteenth Amendment.

Whether the denial of a certified sign language interpreter for disciplinary
proceedings violates the rights of class members under Rev. Wash. Code
2.42.120.

Whether the denial of a qualified sign language interpreter for medical, dental,
and mental health encounters deprives class members of confidential medical

1 communication and informed medical decision-making in violation of the Ninth
2 and Fourteenth Amendments.

3 Whether the denial of a qualified sign language interpreter for medical, dental, and
4 mental health encounters constitutes deliberate indifference to class members' serious
5 medical needs in violation of the Eighth and Fourteenth Amendments.

6 Whether, as defendants contend, they are immune from suit under the
7 Eleventh Amendment.

8 Whether the Court should grant declaratory and injunctive relief with regard to
9 the class as a whole.

10 25. The claims of the named plaintiffs are typical of those of the class.

11 26. The named plaintiffs will fairly and adequately protect the interests of the class
12 because they are subject to the conditions challenged by the class as a whole. The named
13 plaintiffs seek injunctive and declaratory relief that would benefit the entire class. They are
14 represented by counsel who are competent and experienced in civil rights and prisoners'
15 rights litigation.

16 27. Defendants have acted and refused to act on grounds applicable to the class,
17 thereby making appropriate final injunctive and declaratory relief with respect to the class as
18 a whole.

19 VI. FACTUAL ALLEGATIONS

20 A. General Factual Allegations

21 28. The DOC operates a number of correctional facilities throughout the state of
22 Washington. There are currently approximately 13,000 prisoners committed to the custody
23 of DOC.

24 29. Defendants have no system in place to identify and accommodate the special
25 needs of deaf and hearing impaired prisoners.

26 30. Defendants have no system in place to advise deaf and hearing impaired
27
28

1 prisoners of their rights and remedies under the ADA.

2 31. Defendants fail and refuse to provide qualified sign language interpreters for
3 deaf and hearing impaired prisoners in disciplinary proceedings, classification proceedings,
4 medical encounters, educational programs, and other prison services, programs and activities.
5

6 32. Defendants fail and refuse to provide certified sign language interpreters for
7 deaf and hearing impaired prisoners in disciplinary and parole proceedings.

8 33. Defendants fail and refuse to provide deaf and hearing impaired prisoners with
9 assistive devices and auxiliary aids that they require because of their disability.
10

11 34. Defendants fail and refuse to provide deaf and hearing impaired prisoners with
12 access to TTY telephones that is equal to the access hearing prisoners have to regular
13 telephones.

14 35. Defendants have not adequately educated and trained DOC employees to work
15 with and assist deaf and hearing impaired inmates in DOC custody. Nor have defendants
16 hired sufficient staff or procured services, equipment, and other resources to provide
17 qualified interpreter services to deaf and hearing impaired prisoners. Defendants have also
18 failed to supervise and monitor properly DOC staff and officers to ensure compliance with
19 the ADA, Rehabilitation Act, and other federal mandates.
20

21 36. Because of defendants' policies and practices set forth above, deaf and hearing
22 impaired prisoners are excluded from and deprived of the benefits of prison services,
23 programs and activities for which they are otherwise qualified, based solely on their
24 disability.
25

26 **B. Specific Factual Allegations**

27 **1. Plaintiff Sean Duffy**
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

37. Mr. Duffy has been incarcerated by DOC since 1983. He has been fully deaf and mute since childhood. He is able to communicate using signed English. In order to communicate effectively with others (receptively or expressively), Mr. Duffy requires the assistance of a qualified interpreter.

38. Mr. Duffy is a handicapped and disabled person within the meaning of the ADA and Rehabilitation Act. He is otherwise qualified to participate in prison programs and activities, including: orientation to facility rules, inmate rights and privileges; educational, vocational, recreational, rehabilitative, therapeutic, employment, and exit programs; pre-parole programs; medical, dental, and mental health treatment and diagnoses; classification, disciplinary, grievance, loss of good time, and parole hearings; and visits by counsel and other non-inmates.

39. Defendants have long been aware of Mr. Duffy's disability but nevertheless have continually and intentionally refused to accommodate his special needs as a disabled inmate. Mr. Duffy has repeatedly requested an interpreter at prison programs and activities. In most cases, DOC has refused to provide an interpreter. In some cases, DOC has offered the assistance of an inmate or prison official who knew some sign language, but who was not certified or qualified as an interpreter and could not interpret effectively, accurately, and impartially.

40. DOC officers and staff members have attempted to communicate with Mr. Duffy in the above situations through written notes, through pantomime, or by assuming that other inmates could communicate with him. Mr. Duffy was and is unable to communicate effectively with prison officers and staff members through these methods.

41. By refusing to provide Mr. Duffy with qualified interpreter services,

1 defendants have denied Mr. Duffy the benefits of services, programs, and activities offered
2 to other inmates, and have thereby subjected him to discrimination on the basis of his
3 disability. If Mr. Duffy had access to a qualified interpreter, he could have participated in
4 and benefitted from most or all of the programs, services, and activities available to other
5 DOC inmates. These programs, services, and activities are important to Mr. Duffy's
6 rehabilitation efforts, as alleged below.
7

8 42. Defendants' unlawful course of conduct has impeded Mr. Duffy's advancement
9 and status in prison and parole board classification systems and hearings and has jeopardized
10 his earned eligibility for an early parole release and other special entitlements. For example:
11

12 (a) a recent classification report provides: "It has previously been
13 recommended that [Mr. Duffy] participate in Crime-Related Counseling if possible.
14 However, due to his hearing problem, counseling is next to impossible unless he has access
15 to a sign interpreter"

16 (b) in February, 1997, Mr. Duffy requested a qualified interpreter to allow
17 him to participate in an upcoming classification hearing. WSR staff responded, in writing,
18 "a qualified interpreter will not be provided."
19

20 43. As an inmate at a DOC facility, Mr. Duffy periodically attempts to participate
21 in disciplinary proceedings. Defendants have refused to provide Mr. Duffy with a qualified
22 or certified interpreter for these proceedings. As a result, Mr. Duffy has been unable to
23 understand and participate meaningfully (including explaining his version of the events and
24 effectively defending himself) in these proceedings. Consequently, Mr. Duffy has suffered
25 disciplinary sanctions. For example:
26

27 (a) A disciplinary hearing was held on or about July 30, 1992. Mr. Duffy
28

1 requested an interpreter for this hearing. Although DOC staff recognized the need for an
2 interpreter, they did not provide a certified or qualified interpreter. Mr. Duffy was found
3 guilty and sentenced in absentia to 15 days disciplinary segregation.
4

5 (b) A disciplinary hearing was held on or about October 3, 1996. A few
6 months earlier (in July 1996), the Ninth Circuit had ruled that Washington state law requires
7 that DOC provide a certified interpreter at disciplinary hearings. Despite Mr. Duffy's
8 request for such an interpreter, and notwithstanding the Ninth Circuit's ruling, DOC did not
9 provide a certified or qualified interpreter at that hearing. Again, Mr. Duffy was found
10 guilty and suffered disciplinary sanctions, including loss of good time.
11

12 44. The sanctions alleged in the previous paragraph created atypical and significant
13 hardship to Mr. Duffy and caused a major disruption in his environment.

14 45. Mr. Duffy periodically requires and is eligible to receive health care services
15 from DOC. Defendants have refused to provide Mr. Duffy with a qualified interpreter for
16 his interactions with health care personnel. As a result, Mr. Duffy has been unable to
17 communicate adequately with health care personnel about his medical needs, including
18 describing his symptoms, responding to probing questions, giving informed consent to
19 treatment and medication, understanding a given diagnosis, and receiving and understanding
20 appropriate follow-up care. Defendants' ongoing failure to provide a qualified interpreter
21 during medical evaluations and psychological counseling has deprived Mr. Duffy of adequate
22 medical and psychological care.
23

24 46. Educational and vocational opportunities are provided to DOC inmates to
25 prepare them better for a complete and productive life upon discharge. Mr. Duffy is eligible
26 to participate in such programs. Defendants have refused to provide Mr. Duffy with a
27
28

1 qualified interpreter for these programs. As a result, defendants have unlawfully denied
2 Mr. Duffy the right to meaningful educational and vocational training during his
3 incarceration solely because of his disability.
4

5 47. Defendants have failed to inform Mr. Duffy of his rights and remedies under
6 the ADA.

7 48. Defendants have intentionally and deliberately violated Mr. Duffy's federally
8 protected rights, including his rights under the ADA, the Rehabilitation Act, 42 U.S.C.
9 § 1983, and the United States Constitution. Defendants' unlawful course of conduct also
10 reflects a reckless and callous indifference to those rights.
11

12 49. Mr. Duffy has exhausted such administrative remedies as are available to him.

13 2. Plaintiff Charles Atkins

14 50. Plaintiff Charles Atkins was incarcerated at the Washington State Penitentiary
15 (WSP) from 1992 to 1997, and is currently incarcerated at TRCC. He has been fully deaf
16 and mute since the age of two. He is able to communicate using American Sign Language
17 (ASL), which linguistically is an entirely distinct language from English with its own visual,
18 lexical, grammatical, and syntactic structures. In order to communicate effectively with
19 others (receptively or expressively), Mr. Atkins requires the assistance of a qualified
20 interpreter.
21

22 51. Defendants have long been aware of Mr. Atkins' deafness but nevertheless
23 continually refuse to accommodate his needs. A Classification Referral form dated March
24 20, 1992, notes that Mr. Atkins is deaf and "he will need a Special Needs Unit."
25

26 52. On January 11, 1995, with the help of other prisoners, Mr. Atkins wrote a
27 letter to Tana Wood, Superintendent of WSP. In this letter, he requested access to a
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

telecommunication device for the deaf; assistive devices to alert him to meals and other activities; a teacher capable of communicating in sign language; a sign language interpreter to assist him at disciplinary and classification hearings and health care encounters; and a mental health counselor who can communicate in sign language.

53. On February 4, 1995, prison officials held a meeting with Mr. Atkins to respond to his January 11, 1995 letter. The only interpreter services provided at the meeting were those of Allen Renwick, a DOC employee who works in the accounting department of WSP. Mr. Renwick is not a qualified interpreter; indeed, after evaluating Mr. Renwick's interpretation skills, defendants represented to the Court that he will never again provide interpreter services to deaf prisoners. Even after this meeting, defendants failed to accommodate Mr. Atkins' needs as a deaf person.

54. The minutes of a March 21, 1995 Classification Committee meeting at WSP state that "[t]he program at this institution doesn't meet [Mr. Atkins'] special hearing and educational needs." A Classification Referral dated August 9, 1995 from WSP states that "[h]e has special needs that cannot be met at this institution."

55. Mr. Atkins was transferred to TRCC in January 1997. At that institution he continues to be denied access to qualified interpreters and other auxiliary aids and services that he needs because of his deafness.

56. Mr. Atkins is a handicapped and disabled person within the meaning of the Rehabilitation Act of 1973, 29 U.S.C. § 701, et seq., and the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

57. Mr. Atkins is otherwise qualified to participate in health care, education, classification proceedings, disciplinary proceedings, and other services, programs and

1 activities in DOC.

2 58. Defendants have refused to provide Mr. Atkins with qualified interpreter
3 services and other auxiliary aids and services he requires because of his disability. In so
4 doing, defendants have denied Mr. Atkins the benefits of services, programs and activities
5 offered in DOC, and have subjected him to discrimination on the basis of his deafness.
6

7 59. As a prisoner, Mr. Atkins is periodically required to participate in
8 classification and disciplinary proceedings in DOC. Defendants have refused to provide Mr.
9 Atkins with a qualified or certified interpreter for these proceedings. As a result, Mr. Atkins
10 has been unable to understand and meaningfully participate in these proceedings, and has
11 suffered disciplinary sanctions. For example:
12

13 (a) On or about October 19, 1993, Mr. Atkins was charged with a
14 disciplinary infraction and a disciplinary hearing was held. Although staff recognized the
15 need for a sign language interpreter, no interpreter was provided. Mr. Atkins was found
16 guilty of the infraction, and was sentenced to 10 days of confinement to quarters, and lost
17 120 days of good time.
18

19 (b) On or about November 30, 1993, Mr. Atkins was charged with
20 disciplinary infractions and a disciplinary hearing was held. No interpreter was provided.
21 Mr. Atkins was found guilty of the infractions, and was sentenced to 10 days of segregation,
22 and lost 90 days of good time.
23

24 (c) On or about July 7, 1997, Mr. Atkins was charged with a disciplinary
25 infraction and a disciplinary hearing was held. The only interpretation services provided
26 were those of Frances Linder, a correctional mental health counselor employed by
27 defendants. Ms. Linder is not a certified or qualified sign language interpreter. Mr. Atkins
28

1 was found guilty of the infraction, and was sentenced to cell confinement and extra duty.

2 60. The sanctions alleged in the previous paragraph created atypical and significant
3 hardship to Mr. Atkins and caused a major disruption in his environment.
4

5 61. Mr. Atkins periodically requires, and is eligible to receive, health care
6 services in DOC. Defendants have refused to provide Mr. Atkins with a qualified interpreter
7 for his interactions with health care personnel. As a result, Mr. Atkins has been unable to
8 communicate adequately with health care personnel about his medical needs. For example:

9 (a) On or about February 28, 1994, Mr. Atkins was seen by Dan Delp,
10 Physician Assistant. No interpreter was provided. Mr. Delp wrote the following note in
11 Mr. Atkins' file: "Mr. Atkins is deaf. I know no sign language, and his penmanship is very
12 poor and very difficult to read. I did manage to understand that he is requesting to have a
13 sack lunch at night. I never did find out why."
14

15 (b) On or about October 23, 1995, Mr. Atkins was seen by Ronald W. Fleck,
16 M.D., because Mr. Atkins was complaining of weight loss. The only interpretation services
17 provided were those of Mr. Renwick.
18

19 (c) On or about January 27, 1997, Mr. Atkins was seen by a health care
20 provider at TRCC, because Mr. Atkins was complaining that he was not getting enough to
21 eat. Mr. Atkins was not provided with a qualified interpreter for this medical encounter.
22

23 (d) On or about October 24, 1997, Mr. Atkins was seen by a dentist at
24 TRCC. The only interpretation services provided were those of a prisoner. This prisoner is
25 not a qualified or certified interpreter and, unlike a certified interpreter, is under no
26 obligation to treat as confidential the private medical information he learns in the course of
27 interpreting for Mr. Atkins.
28

E-1'

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

62. Mr. Atkins is eligible to participate in educational programs in DOC. Defendants have refused to provide Mr. Atkins with a qualified interpreter for these programs. As a result, Mr. Atkins has been excluded from participation in and denied the benefits of educational programs, including basic education, solely because of his disability.

63. Because of his deafness, Mr. Atkins is unable to hear announcements of meals, recreation, and other prison activities, as well as emergency alarms and announcements. Defendants have refused to provide Mr. Atkins with assistive devices, auxiliary aids, or any other alternative means of notifying him of these activities. As a result, Mr. Atkins has often been excluded from participation in these activities solely because of his disability.

64. Because of his deafness, Mr. Atkins is unable to use a regular telephone. Defendants have failed to provide Mr. Atkins with access to a TTY telephone that is equal to the access hearing prisoners have to a regular telephone. Thus, Mr. Atkins has been denied the benefit of these telephone services solely because of his disability. As a result, Mr. Atkins has been unable to communicate adequately with family members and with his attorneys.

65. Defendants have failed to inform Mr. Atkins of his rights and remedies under the ADA.

66. Mr. Atkins has exhausted such administrative remedies as are available to him.

VII. CAUSES OF ACTION

67. By excluding deaf and hearing impaired prisoners from participation in and denying them the benefits of prison services, programs, and activities because of their disability (as alleged above and incorporated herein by reference), defendants have violated

1 the Americans With Disabilities Act, 42 U.S.C. §§ 12131-33, and regulations promulgated
2 thereunder, 28 C.F.R. Part 35.

3
4 68. By excluding deaf and hearing impaired prisoners from participation in and
5 denying them the benefits of prison services, programs, and activities solely because of their
6 disability (as alleged above and incorporated herein by reference), defendants have violated
7 Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and regulations promulgated
8 thereunder, 28 C.F.R. Part 42.

9
10 69. By denying deaf and hearing impaired prisoners a qualified interpreter for
11 disciplinary proceedings (as alleged above and incorporated herein by reference), defendants
12 have deprived them of liberty without due process of law, in violation of 42 U.S.C. § 1983
13 and the due process clause of the Fourteenth Amendment to the United States Constitution.

14 70. By denying deaf and hearing impaired prisoners a certified interpreter for
15 disciplinary and parole proceedings (as alleged above and incorporated herein by reference),
16 defendants have violated their statutory rights under Wash. Rev. Code 2.42.120, as
17 interpreted and applied to defendants' conduct by the Ninth Circuit in this case.

18
19 71. By denying deaf and hearing impaired prisoners a qualified interpreter when
20 necessary to communicate with medical and mental health staff (as alleged above and
21 incorporated herein by reference), defendants have violated their right to confidential and
22 informed medical and mental health communications and decision-making in violation of 42
23 U.S.C. § 1983 and the Ninth and Fourteenth Amendments to the United States Constitution.

24
25 72. Defendants' ongoing failure to provide a qualified interpreter during medical,
26 dental, and psychiatric examination, diagnosis, and treatment also constitutes deliberate
27 indifference to the serious medical and psychological needs of deaf and hearing impaired
28

1 prisoners in violation of 42 U.S.C. § 1983 and the Eighth Amendment to the United States
2 Constitution.

3
4 73. Defendants' failure and refusal to provide deaf and hearing impaired prisoners
5 with access to TTY telephones that is equal to the access hearing prisoners have to regular
6 telephones (as alleged above and incorporated herein by reference) violates the Americans
7 with Disabilities Act, 42 U.S.C. §§ 12131-33, and § 504 of the Rehabilitation Act of 1973,
8 29 U.S.C. § 794.

9
10 74. Defendants' failure and refusal to provide deaf and hearing impaired prisoners
11 with assistive devices and auxiliary aids (as alleged above and incorporated herein by
12 reference) violates the Americans with Disabilities Act, 42 U.S.C. §§ 12131-33, and § 504
13 of the Rehabilitation Act of 1973, 29 U.S.C. § 794.

14
15 75. Defendants' failure and refusal to inform deaf and hearing impaired prisoners
16 of their rights under the ADA (as alleged above and incorporated herein by reference)
17 violates the Americans with Disabilities Act.

18 VIII. PRAYER FOR RELIEF

19 Plaintiffs ask that the Court grant the following relief:

- 20 1. Certify a plaintiff class consisting of all deaf and hearing impaired persons
21 who are now, or who will in the future be, committed to the custody of the DOC;
- 22 2. Pursuant to 28 U.S.C. § 2201 and Rule 57 of the Federal Rules of Civil
23 Procedure, declare that defendants have violated the ADA, the Rehabilitation Act, 42 U.S.C.
24 § 1983, the Eighth, Ninth, and Fourteenth Amendments to the United States Constitution,
25 and Wash. Rev. Code 2.42.120;
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3. Pursuant to 28 U.S.C. § 2202 and Rule 65 of the Federal Rules of Civil Procedure, order that defendants, their agents, employees, and other persons acting in concert with them:

- (a) cease violating federal and state law, as alleged above;
- (b) assess the communication abilities and needs of all deaf and hearing impaired prisoners in their custody;
- (c) provide qualified interpreter services to deaf and hearing impaired prisoners at no cost to them at prison services, programs, and activities;
- (d) provide certified interpreter services to deaf and hearing impaired prisoners at no cost to them at disciplinary and parole hearings;
- (e) Provide assistive devices and auxiliary aids to deaf and hearing impaired prisoners;
- (f) Provide deaf and hearing impaired prisoners with access to TTY telephones that is equal to the access hearing prisoners have to regular telephones;
- (g) Inform deaf and hearing impaired prisoners of their rights and remedies under the ADA;
- (h) promulgate policies and procedures for provision of these services to deaf and hearing impaired prisoners;
- (i) purge from the records of deaf and hearing impaired prisoners reference to every disciplinary infraction unless appropriate interpreter services (a qualified interpreter under federal law, a certified interpreter

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

under state law) were made available to them during each disciplinary proceeding; and

(j) grant deaf and hearing impaired prisoners all credit in the prison placement, classification, and parole system that they would have received if they had not been denied access to qualified interpreters and other auxiliary aids and services;

4. Pursuant to state and federal law (as set forth above), plaintiff Sean Duffy seeks compensatory and punitive damages in an amount to be established at trial;

5. Pursuant to 29 U.S.C § 794a(b), 42 U.S.C. § 12205, and 42 U.S.C. § 1988, plaintiffs seek costs and disbursements herein, including reasonable attorney's fees; and

6. Such other relief as the Court deems just and proper.

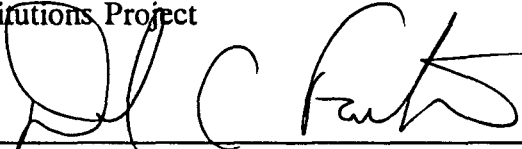
DATED this 8th day of January, 1998.

HELLER, EHRMAN, WHITE & McAULIFFE

By: 

for Leonard J. Feldman, WSBA #20961 by
Felix Gavi Luna, WSBA #27087 telephone
Attorneys for Plaintiff Sean Duffy authorizes

COLUMBIA LEGAL SERVICES
Institutions Project

By: 

Patricia J. Arthur, WSBA #13769
Jeff B. Crollard, WSBA #15561
David C. Fathi, WSBA #24893
Attorneys for Plaintiff Charles Atkins

Duffy v. Riveland



PC-WA-0003-0003