

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
At FRANKFORT

[Filed Electronically]

OSCAR ADAMS and MICHAEL KNIGHTS,)
individually and on behalf of all others)
similarly situated,)

Plaintiffs,)

v.)

COMMONWEALTH OF KENTUCKY)
(for injunctive relief only))

Serve: Jack Conway)
Office of the Attorney General)
700 Capitol Avenue, Suite 118)
Frankfort, Kentucky 40601)

KENTUCKY JUSTICE AND PUBLIC)
SAFETY CABINET (for injunctive relief only))

Serve: J. Michael Brown)
Office of the Secretary)
125 Holmes Street)
Frankfort, KY 40601-2108)

Civil Action No. _____

KENTUCKY DEPARTMENT OF)
CORRECTIONS (for injunctive relief only))

Serve: LaDonna Thompson)
Office of the Commissioner)
Kentucky Department of Corrections)
275 East Main)
Frankfort, KY 40601-2321)

J. MICHAEL BROWN, individually and in his)
official capacity as Secretary of the Kentucky)
Justice and Public Safety Cabinet)

Serve: Office of the Secretary)
125 Holmes Street)
Frankfort, KY 40601-2108)

LADONNA THOMPSON, individually and in her)
official capacity as Commissioner of the Kentucky)
Department of Corrections)

Serve: Office of the Commissioner)
Kentucky Department of Corrections)
275 East Main)
Frankfort, KY 40601-2321)

**KIMBERLY POTTER-BLAIR, individually and)
in her official capacity as Deputy Commissioner)
of Support Services of the Kentucky Department)
of Corrections)**

Serve: Office of the Deputy Commissioner of)
Support Services)
Kentucky Department of Corrections)
275 East Main)
Frankfort, KY 40601-2321)

**PAULA HOLDEN, individually and in her)
official capacity as Deputy Commissioner of)
Community Services of the Kentucky Department)
of Corrections)**

Serve: Office of the Deputy Commissioner of)
Community Services)
Kentucky Department of Corrections)
275 East Main)
Frankfort, KY 40601-2321)

**JIM ERWIN, individually and in his official)
capacity as Deputy Commissioner of Adult)
Institutions of the Kentucky Department of)
Corrections)**

Serve: Kentucky Department of Corrections)
Education Branch)
275 East Main)
Frankfort, KY 40601-2321)

**RANDY WHITE, individually and in his official)
capacity as Warden of the Kentucky State)
Penitentiary)**

Serve: Office of the Warden)
Kentucky State Penitentiary)
266 Water Street)
Eddyville, KY 42038)

GREGORY HOWARD, individually and in his)
official capacity as Warden of the Luther Lockett)
Correctional Complex)
 Serve: Office of the Warden)
 Luther Lockett Correctional Complex)
 Dawkins Road, Box 6)
 LaGrange, KY 40031)
)
CLARK TAYLOR, individually and in his official)
capacity of Warden of the Kentucky State)
Reformatory)
 Serve: Office of the Warden)
 Kentucky State Reformatory)
 3001 West Highway 146)
 LaGrange, KY 40032)
)
 Defendants.)

COMPLAINT

1. This is a class action lawsuit based on the willful and deliberate refusal of the Defendants to comply with federal laws protecting the rights of the Plaintiffs, who are deaf or hard of hearing individuals in the custody of Defendant Kentucky Department of Corrections (“KDOC”).

2. The state agencies, entities, and officials named as Defendants in this case have failed to comply with federal laws, including the Americans with Disabilities Act, 42 U.S.C. § 12131 et seq., the Rehabilitation Act, 29 U.S.C. § 794 et seq., and the Constitution of the United States.

3. Through their policies and practices, Defendants discriminate against deaf and hard of hearing individuals in KDOC’s custody. They have done this by denying deaf and hard of hearing individuals in their custody adequate and equally effective means of communication with individuals outside of prison—including effective communications between the Plaintiffs and their loved ones. Defendants have also failed to provide adequate access to other auxiliary aids and services necessary to accommodate deaf and hard of hearing individuals in a variety of

settings, including in connection with educational, religious, healthcare, and rehabilitative programs. Defendants also refuse to provide deaf and hard of hearing individuals in KDOC custody with adequate notification of important daily events and safety announcements, or to provide adequate interpretative services at disciplinary hearings. Additionally, Defendants have discriminated against inmates who are deaf or hard of hearing in work assignments.

4. As a result of the Defendants' discriminatory policies and practices, deaf and hard of hearing individuals in KDOC's custody and care:

- have been prevented from effectively communicating by telephone with family, friends, and attorneys outside of prison;
- have been unable to receive necessary and adequate medical treatment;
- have missed prison-wide safety announcements, prison counts, and announcements for meals and other important daily activities;
- have been excluded from participation in educational and counseling programs offered by KDOC, including those required under the terms of their sentencing;
- have been unable to and discouraged from attending standard religious services due to inadequate accommodations;
- have been discriminated against in work assignments;
- have been denied the ability to meaningfully participate and defend themselves in disciplinary hearings; and
- have been prevented from learning a trade and receiving educational and industrial credits that could reduce their overall incarceration time.

5. Plaintiffs seek declaratory and injunctive relief, and damages from the individual Defendants named herein in their individual capacities, on their own behalf and on behalf of the

class of all deaf and hard of hearing individuals in KDOC's custody for the harms they have suffered and continue to suffer as a result of the Defendants' discrimination.

I. JURISDICTION

6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 (Federal Question).

II. VENUE

7. Venue is proper in this District, under 28 U.S.C. § 1391(b), because all Defendants reside in this District in Kentucky, and a substantial part of the events giving rise to claims herein occurred within this District.

III. PARTIES

A. Plaintiffs

8. Named Plaintiff Michael Knights ("Mr. Knights"), inmate # 233021, has a hearing disability and is currently incarcerated at Kentucky State Penitentiary ("KSP"), and under KDOC's custody and control.

9. Named Plaintiff Oscar Adams ("Mr. Adams"), inmate # 243676, has a hearing disability and is currently incarcerated at Kentucky State Reformatory ("KSR"), and under KDOC's custody and control.

10. Mr. Knights is profoundly deaf, and has been deaf since birth. Mr. Knights is educated and relies on American Sign Language ("ASL") to communicate. To further his education, Mr. Knights is currently trying to pursue a GED within the KDOC system. Mr. Knights requires a sign language interpreter to effectively communicate with persons who do not know ASL, and due to his deafness cannot use a standard telephone.

11. Mr. Adams is profoundly deaf, and has been deaf since birth. Mr. Adams relies on American Sign Language ("ASL") to communicate. Mr. Adams attended and successfully

graduated from the Kentucky School for the Deaf in 1999. Mr. Adams cannot use a standard telephone and requires an interpreter to communicate with those who are not proficient in ASL.

B. Defendants

1. State Agencies

12. KDOC is the Kentucky state agency responsible for the operation of 12 correctional facilities. KDOC is a division of Defendant the Kentucky Justice and Public Safety Cabinet (“the Cabinet”), which in turn is a governmental subdivision of Defendant the Commonwealth of Kentucky. KDOC’s Mission Statement is: *To protect the citizens of the Commonwealth and to provide a safe, secure and humane environment for staff and offenders in carrying out the mandates of the legislative and judicial processes; and, to provide opportunities for offenders to acquire skills which facilitate non-criminal behavior.*

2. Individuals

13. J. Michael Brown is Secretary of the Cabinet, is responsible for the training and supervision of employees of the Cabinet and the KDOC, and is responsible for their recognition of and compliance with Kentucky laws.

14. LaDonna H. Thompson is the Commissioner of the KDOC and is responsible for the day-to-day operations of KDOC. On information and belief, she is aware of KDOC’s policies and practices regarding deaf and hard of hearing individuals.

15. Kimberly Potter-Blair is the Deputy Commissioner of Support Services of the KDOC and is responsible for administrative services, corrections training, budget management, offender information, information technology, population management, and re-entry branch. On information and belief, she is aware of KDOC’s policies and practices regarding deaf and hard of hearing individuals.

16. Paula Holden is the Deputy Commissioner of Community Services of the KDOC and is responsible for the oversight of KDOC's Probation & Parole Division and Local Facilities. On information and belief, she is aware of KDOC's policies and practices regarding deaf and hard of hearing individuals.

17. Jim Erwin is the Deputy Commissioner of Adult Institutions of the KDOC and is responsible for the oversight of KDOC's Adult Institutions Division. On information and belief, he is aware of KDOC's policies and practices regarding deaf and hard of hearing individuals.

18. Randy White is the Warden of the Kentucky State Penitentiary ("KSP"). KSP is a maximum and supermax security correctional facility located in Eddyville, Kentucky. The facility opened in 1889. Upon information and belief, at least some of the KDOC's deaf inmates are in custody at KSP. As Warden, Mr. White is the legal custodian of individuals under the custody and care of KSP, and is responsible for their safe, secure, and humane treatment. On information and belief, he is aware of KDOC's policies and practices regarding deaf and hard of hearing individuals and he is aware of specific written complaints by deaf and hard of hearing individuals at KSP regarding the violation of their rights.

19. Gregory Howard is the Warden of the Luther Lockett Correctional Complex ("LLCC"). LLCC is a minimum and medium security correctional facility located in LaGrange, Kentucky. The facility opened in 1981. Upon information and belief, at least some of the KDOC's deaf inmates are in custody at LLCC. As Warden, Mr. Howard is the legal custodian of individuals under the custody and care of LLCC, and is responsible for their safe, secure, and humane treatment. On information and belief, he is aware of KDOC's policies and practices regarding deaf and hard of hearing individuals and he is aware of specific written complaints by deaf and hard of hearing individuals at LLCC regarding the violation of their rights.

20. Clark Taylor is the Warden of the Kentucky State Reformatory (“KSR”). KSR is a medium security correctional facility located in LaGrange, Kentucky. The facility was established in 1936. Upon information and belief, at least some of the KDOC’s deaf inmates are in custody at KSR. As Warden, Mr. Taylor is the legal custodian of individuals under the custody and care of KSR, and is responsible for their safe, secure, and humane treatment. On information and belief, he is aware of KDOC’s policies and practices regarding deaf and hard of hearing individuals and he is aware of specific written complaints by deaf and hard of hearing individuals at KSR regarding the violation of their rights.

21. Defendants Brown, Thompson, Potter-Blair, Holden, Erwin, White, Howard and Taylor (“the Individual Defendants”) are all state actors, acting under color of Kentucky statutes and regulation in all activities relevant to this action.

IV. FACTS

22. For years, KDOC has failed to provide the deaf and hard of hearing inmates housed at its facilities the accommodations that are required by the Title II of the Americans with Disabilities Act (“ADA”) and Section 504 of the Rehabilitation Act of 1973 (“Section 504”). In January 2013, Plaintiff Michael Knights and other deaf and hard of hearing inmates at LLCC retained the services of Weil, Gotshal & Manges LLP (“Weil”) and the Washington Lawyers’ Committee for Civil Rights and Urban Affairs (“WLC”) to assist them in obtaining the lacking accommodations. Attorneys at Weil and the WLC first began to raise these matters with the KDOC, LLCC, and KSR in May 2013, through correspondence with the KDOC’s Commissioner, Ms. Thompson, and the two correctional facilities’ wardens, Messrs. Howard and Taylor, respectively.

23. Defendants are aware of their obligations under state and federal laws. Nevertheless, Defendants have not remedied their past pattern and practice of discrimination and

continue to discriminate against deaf and hard of hearing individuals, resulting in disability-based discrimination in at least five different areas: (A) ineffective access to telecommunications; (B) ineffective access to auxiliary aids and services; (C) ineffective access to prison alerts and announcements; (D) ineffective communication during disciplinary proceedings; and (E) inadequate access to prison vocational opportunities.

A. Ineffective Access to Telecommunications

24. KDOC provides hearing individuals in its custody access to telecommunications services in order for them to communicate with family, friends, and other individuals outside of prison.

25. As the federal government has recognized, “[t]elephone privileges are a supplemental means of maintaining community and family ties that will contribute to an inmate’s personal development.” 28 C.F.R. § 540.100. Telephone and other forms of telecommunication are very important to individuals in KDOC’s custody because they foster the family and community ties that are fundamental to motivate incarcerated individuals to improve themselves and to prepare them to make a positive transition back to civilian life once their sentence is complete.

26. Because of their disability, most deaf and hard of hearing KDOC inmates cannot use traditional telephones to communicate with individuals outside of prison.

1. Telecommunications Devices for the Deaf (TDDs)

27. Some KDOC facilities, including KSR and KSP, provide deaf individuals in their custody with limited access to telecommunications devices for the deaf, or “TDDs”. TDDs are electronic devices for text communication via a telephone line to enable people with hearing and speech disabilities to communicate by telephone. Based on fifty-year-old technology, the TDD is basically a telephone equipped with a keyboard and a display screen. To communicate with

the deaf, the user of a TDD must type out everything that is said in a conversation. A TDD is effectively useless if both parties to a conversation do not have TDD devices. In other words, a deaf person with a TDD device cannot communicate with other deaf individuals who do not have TDD devices.

28. With special assistance (*i.e.*, a relay service), deaf TDD users can communicate with hearing persons. Relay services are federally-mandated services that operate as follows: the party using the TDD places a call to a relay center, and a relay operator answers the call using another TDD. The caller provides the operator with the phone number of the party with whom they wish to communicate, and the operator places the call. When a hearing person answers the phone, the relay operator explains the relay service and states the name of the caller. The responses of the hearing person are typed by the relay operator into a TDD, and transmitted over the telephone lines to the TDD user. The call proceeds with the relay operator voicing what the TDD user types to the hearing person receiving the call, and typing what the hearing person speaks. The process can also work the other way—a hearing person who has no TDD can call deaf individuals from a traditional telephone by using the relay service.

29. The relay service is free of cost to the users and the caller pays only for the cost of the call to the party with whom the caller wishes to converse. To connect to a relay services center, an individual can either dial “711” from anywhere within the United States or dial the toll-free “800” number of the relay service in the caller’s locality. Accordingly, TDD relay services in Kentucky may be accessed either by calling 711 or by calling Kentucky’s toll-free relay service number.

30. For the most part, deaf individuals in the United States who use ASL have abandoned the 50-year-old TDD technology and now utilize up-to-date and much more

convenient videophones. For those deaf individuals still using a TDD, it is impossible to communicate with a videophone user.

31. On information and belief, KSR has at least one TDD; however, deaf and hard of hearing individuals incarcerated at KSR are repeatedly denied access to it. On information and belief, KSP and LLCC similarly have at least (and likely only) one TDD which deaf and hard of hearing inmates are also frequently denied access.

32. In those rare instances when deaf and hard of hearing individuals are granted access to the TDD it is ordinarily, yet inexplicably, for a shorter period of time than they would have on a normal phone. This is especially detrimental where, as here, the conversations are necessarily slower and more drawn out given the drawbacks of the technology.

33. KSR has never addressed the problem related to the resultant inequality when it comes to TDD use.

2. Videophones

34. Videophones and free or low-cost internet-based video links (collectively, “videophones”) are (and have been for quite some time) replacing TDDs among deaf people because they allow deaf individuals to communicate with one another directly in ASL, without having to communicate through written English (an effectively foreign language, that is especially difficult for many deaf persons to communicate in) and without the use of relay services. When using a videophone, callers can see each other, usually over an internet connection. As a result, many deaf households no longer own a TDD and have no way to accept a TDD call, as they rely exclusively on videophones for telecommunication.

35. Deaf individuals using videophones can also call a Video Relay Service (“VRS”) to place calls to people who do not understand ASL or do not have a videophone. The mechanics of VRS are very similar to those of traditional TDD relay service—the caller is routed

to an interpreter, the caller gives the interpreter the number of the party he is trying to reach, and the interpreter then interprets the conversation into spoken English.

36. Videophones and VRS permit deaf people to use ASL instead of having to carry out every telephone call in written English through a TDD. Due to the fact that TDDs rely on written communications, they are by nature an unsatisfactory and ineffective means of communication for many deaf individuals. Writing usually does not provide effective communication for a deaf individual. Many deaf individuals who became deaf before acquiring language skills consider ASL to be their native language and English to be their second language. Additionally, many deaf people acquire English as their second language much later in life. Therefore, the English reading and writing skill level of many deaf individuals, including those incarcerated at KDOC institutions, is generally much lower than that of hearing people.

37. Provision of videophones would also ensure that deaf inmates could place telephone calls to deaf family and friends, the vast majority of whom no longer have TDD devices.

38. Deaf individuals in Defendants' custody have repeatedly requested videophone access, but have been denied this access.

a. Videophones at KSP

39. There are deaf inmates at KSP who use ASL and who are denied effective telecommunication services due to the failure of KSP to provide videophone services to them.

40. Plaintiff Michael Knights cannot communicate with his friends and family who have videophones but not TDD. Without the videophone, it is virtually impossible for Mr. Knights to contact his sister, his daughter, his daughter's mother, and his friends.

41. Plaintiff Michael Knights filed a formal Grievance with Warden White to specifically request access to videophones. Warden White stated in his first stage response that

the TDD system provides effective communication because Mr. Knights can call his legal counsel. Despite Mr. Knights' ability to call his legal counsel using TDD, it is still inadequate because Mr. Knights cannot effectively communicate with his family and friends. Additionally, deaf inmates at KSP have extremely restricted and an unacceptable level of access to the TDD, especially in relation to hearing inmates' access to standard telephones.

b. Videophones at KSR

42. There are deaf inmates at KSR who use ASL and who are denied effective telecommunication services due to the failure of KSR to provide videophone services to them.

43. Plaintiff Oscar Adams cannot communicate with his friends and family on the outside given the lack of videophone services. In particular, Mr. Adams is very close to his mother, but cannot communicate with her because she only has a videophone. Unfortunately, Mr. Adams cannot even communicate with his mother in person because the evolution of her fight with lupus prevents her now from visiting him. Mr. Adams is allowed to use the TDD service just once a week for 10-15 minutes.

c. Videophones at LLCC

44. On August 10, 2012, Plaintiff Michael Knights, filed a formal Grievance with Warden Howard to address the unequal treatment afforded to deaf inmates with respect to the phone system and specifically requested access to videophones. On September 20, 2012, Warden Howard dismissed the request on the basis that Mr. Knights and other deaf inmates are not mistreated because they can use the TDD.

45. On information and belief, despite the initial refusal, LLCC eventually understood, at least in part, the significant unconstitutional hardships it was placing on its deaf inmates and, at least provisionally, installed a videophone.

46. On information and belief, to the extent that videophone is still accessible to deaf inmates at LLCC it is available on unnecessarily and unconstitutionally restrictive terms – including prohibitively short periods of time.

d. Videophones at other KDOC Facilities

47. Additionally, there are at least some hearing inmates housed at LLCC who have deaf family on the outside. These individuals can only communicate with their deaf family on an irregular basis.

48. Upon information and belief, deaf and hard of hearing inmates at other KDOC facilities have been denied equal and consistent access to telecommunication services at those facilities.

B. Inadequate Access to Auxiliary Aids and Services

49. Individuals in the custody of KDOC are by necessity wholly dependent on KDOC for medical, dental, educational, mental health, employment, and religious services, among other services. Individuals in the custody of KDOC are also dependent on KDOC and its staff for all of their basic daily needs, including food, exercise, and safety.

1. Sign Language Interpreter Services

50. For deaf or hard of hearing individuals who rely on ASL as their primary form of communication, use of a qualified ASL interpreter is necessary to ensure effective communication between a deaf or hard of hearing individual and an individual who does not use ASL to communicate.

51. A qualified sign language interpreter is necessary because ASL is a complete, complex language that employs signs made with the hands and other movements, including facial expressions and postures of the body. It is a language distinct from English—it is not

simply English in hand signals-it has its own vocabulary, and its own rules for grammar and syntax.

52. As noted above, writing usually does not provide effective communication for a deaf individual. English is generally considered a second language for most deaf persons who became deaf before acquiring language—ASL is their native language. Also, several deaf people acquire English as their second language later in life, past the critical period of language acquisition. Therefore, the English reading and writing skill level of many deaf individuals, including those incarcerated in KDOC facilities, is generally much lower than that of hearing people.

53. Lip-reading usually does not provide effective communication for a deaf individual and is generally far less effective than written communication. It is extremely difficult to lip-read English because only a small fraction of the sounds used in the language are clearly visible on the mouth, and many sounds that are visible look identical on the lips. In addition to these difficulties in lip-reading, the ability to accurately lip-read is affected by the speaker's facial bone structure, facial musculature, facial hair, lighting, and other external factors. Moreover, even if an ASL user were able to understand the sounds appearing on a speaker's lips, for the reasons discussed above she would not necessarily understand the English language or the vocabulary the speaker was using.

54. Thus, the provision of qualified sign language interpreter services is the auxiliary service necessary to allow deaf individuals who use ASL in KDOC's custody and under KDOC's supervision to effectively communicate with KDOC officials, KDOC employees, and medical personnel.

55. Defendants, through their policies and practices, fail to provide adequate access to sign language interpreters for deaf individuals in KDOC's custody and control and under KDOC's supervision.

56. On information and belief, Defendants do not provide adequate access to sign language interpreters at KDOC facilities throughout Kentucky.

a. Interpreters for Access to Medical Services

57. Defendants are responsible for the medical care of all individuals incarcerated by KDOC.

58. Deaf individuals who rely on ASL require sign language interpreters to communicate effectively with medical staff.

59. After receiving numerous written requests, Defendants are aware that deaf individuals need sign language interpreters for their medical appointments.

60. Nonetheless, deaf inmates at LLCC are still denied interpreter services at medical appointments.

61. Deaf inmates at facilities other than LLCC, including those housed at KSR and KSP, are consistently denied interpreter services for medical appointments. Mr. Adams, an inmate at KSR, has been denied access to interpreters for medical appointments despite known and serious medical conditions.

b. Interpreters for Access to Administrative Meetings

62. Defendants provide educational, mental health and counseling programs for individuals in KDOC's custody.

63. Interpreters are not provided by Defendants for such programs, including for educational classes and for religious ceremonies. The same holds true for KSP, KSR and LLCC.

c. Interpreters for Access to Prison Programs

64. Interpreters are not provided by Defendants for meetings between prison employees and inmates.

65. Mr. Adams was denied an ASL qualified interpreter at his reclassification meeting at KSR.

2. Other Auxiliary Aids and Services

66. For deaf and hard of hearing inmates who do not use ASL, other auxiliary aids and services are necessary to ensure their effective participation in and understanding of Defendants' services and programs.

67. Computer Assisted Real Time ("CART") is a system that provides access to spoken information for people with hearing loss. CART operators use a court reporting machine to input spoken text. The output of the court reporting machine is fed to a computer, which produces a text document that corresponds very closely to the words used by the speaker. Once in the computer, the text can be displayed on a computer monitor (for one or two users) or projected onto a screen (for more users.) CART is generally the system of choice for late-deafened people attending classes or meetings.

68. An Assistive Listening Device or System ("ALDS") can be any one of several technologies that are used to improve the reception of speech for people with impaired hearing, including Mr. Adams, when it might be difficult or impossible to hear otherwise.

69. Thus, CART and/or ALDS is necessary to allow certain deaf or hard of hearing individuals in KDOC's custody and under KDOC's supervision to effectively understand and participate in KDOC programs and services.

70. Defendants, through their policies and practices, fail to provide adequate access to CART or ALDS for deaf or hard of hearing individuals in KDOC's custody and control and under KDOC's supervision.

71. On information and belief, Defendants do not provide adequate access to CART or ALDS at KDOC facilities throughout Kentucky.

a. Auxiliary Aids and Services at KSP

72. Deaf and hard of hearing inmates at KSP are unconstitutionally denied the conveniences of effectively all auxiliary aids and services.

b. Auxiliary Aids and Services at KSR

73. Deaf and hard of hearing inmates at KSR have been denied effective access to programs, such as stress management, anger management and educational classes, due to the lack of any system of providing them with effective communication, such as CART and/or ALDS.

c. Auxiliary Aids and Services at LLCC

74. Deaf and hard of hearing inmates at LLCC have also been denied educational opportunities, such as classes to achieve a General Educational Development ("GED") degree, due to the lack of any system of providing them with effective communication, such as CART and/or ALDS.

75. For example, Mr. Knights, while incarcerated at LLCC, had attempted to complete his GED, but was unable to because of the inadequate accommodations for the deaf.

d. Auxiliary Aids and Services at other KDOC Facilities

76. Upon information and belief, deaf and hard of hearing inmates at other KDOC facilities have been denied auxiliary aids and services at those facilities.

C. Access to Visual Notification of Announcements

77. Deaf and hard of hearing inmates throughout KDOC institutions have difficulty in accessing public address and other audio alerts and announcements available to other inmates.

1. Visual Notification at LLCC

78. Because deaf and hard of hearing inmates have been unable to hear daily announcements made by LLCC staff, such as announcements requiring inmates to report to their cells for head counts, special accommodations are necessary to assure that the deaf inmates are aware of the announcements. Often times the deaf are punished for failing to abide by such announcements; however, the deaf inmates are not ignoring the announcements, rather they are unaware such announcements were ever made.

79. LLCC does on occasion use bed shakers for awakening deaf inmates in the morning. However, the extent of even this minimal convenience is insufficient and does not address the numerous other accommodations that must be provided to assure that deaf inmates are apprised of prison announcements, emergencies, and roll calls.

2. Visual Notification at KSP

80. KSP also only provides minimal, if any, visual accommodations to deaf inmates. There is no paging system or other system to adequately notify deaf inmates of public announcements.

3. Visual Notification at KSR

81. KSR also only provides minimal visual accommodations to deaf inmates and does not provide any type of paging system or other adequate notifications of public announcements.

4. Visual Notification at Other KDOC Facilities

82. Upon information and belief, deaf and hard of hearing inmates at other KDOC facilities have been denied visual notification of announcements at those facilities.

D. Failure to Provide Effective Communication at Disciplinary Proceedings

83. Deaf and hard of hearing inmates are subjected to disciplinary proceedings without effective communication.

84. Although they are punished, many of these inmates do not understand the charges against them or the parameters of their punishment. Moreover, the inmates are denied the ability to defend themselves when they cannot hear what is happening during the hearings.

85. When inmates violate rules and regulations of LLCC, KSP, and KSR, they undergo disciplinary proceedings conducted by hearing officers. During these proceedings, the inmates have an opportunity to defend themselves, to hear the allegations against them, and to understand the parameters of their punishment.

86. KDOC, LLCC, KSP, KSR, and their agents are denying the deaf and hard of hearing inmates full due process by failing to provide appropriate auxiliary services, interpreters, or other means of interpretation.

87. The deaf and hard of hearing inmates are subjected to these proceedings without understanding what is happening during the hearings. Because they are denied interpreters and/or assistive listening devices or other auxiliary aids or services the inmates are unable to hear the adjudicator(s), the allegations against them, or any of the results of the proceeding. They are disciplined without complete knowledge of the claims against them or the length of their punishment.

E. Access to Employment Opportunities

88. Deaf and hard of hearing inmates are, solely because of their disabilities, routinely denied employment opportunities within KDOC facilities. Further they are denied training opportunities.

89. On information and belief, deaf inmates at KSP, KSR and LLCC have been discriminated against in their efforts to participate fully and fairly in both training and employment opportunities in “Prison Industries.”

90. Upon information and belief, deaf and hard of hearing inmates at other KDOC facilities have been denied the same opportunities.

91. Defendants’ failure to provide its deaf and hard of hearing inmates with access to telecommunication devices and services, effective communication within KDOC institutions, access to announcements and alerts within the KDOC institutions, and access to employment opportunities within KDOC institutions, has resulted in harm, and may result in future harm, to deaf and hard of hearing individuals in KDOC custody. It also violates their rights under the Americans with Disabilities Act, the Rehabilitation Act of 1973, and the United States Constitution.

V. CLAIMS FOR RELIEF

COUNT I

DISCRIMINATION ON THE BASIS OF A DISABILITY IN VIOLATION OF THE AMERICANS WITH DISABILITIES ACT (42 U.S.C. § 12131 ET SEQ.)

(Against all Defendants by the Plaintiffs on behalf of themselves and a class of similarly situated individuals)

92. Plaintiffs allege and incorporate by reference each and every allegation above as if fully set forth herein.

93. On July 12, 1990, Congress enacted the ADA “to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.” 42 U.S.C. § 12101(b) (1). Title II of the ADA states that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be

denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132.

94. Plaintiffs are qualified individuals with a disability within the meaning of Title II of the ADA, 42 U.S.C. § 12131(2).

95. The claims under the ADA are brought against the Defendants as departments, agencies, or instrumentalities of the State of Kentucky.

96. Defendants are each a “public entity” within the meaning of 42 U.S.C. § 12131(1)(B).

97. At all times relevant to this action, the ADA was in full force and effect in the United States and Plaintiffs had a right not to be subjected to discrimination on the basis of their disability by the Defendants. 42 U.S.C. § 12132.

98. The U.S. Department of Justice (“DOJ”) regulation implementing Title II of the ADA clearly requires the provision of effective communication as part of its nondiscrimination mandate. 28 C.F.R. 35.160.

99. The regulation states that “[a] public entity shall take appropriate steps to ensure that communications with applicants, participants, and members of the public . . . With disabilities are as effective as communications with others.” 28 C.F.R. § 35.160(a).

100. Defendants’ failure to provide effective communication for individuals with hearing disabilities denied and continues to deny, on the basis of their disability, Plaintiffs the same access to Defendants’ services, benefits, activities, programs, or privileges as the access provided to hearing individuals.

101. Plaintiffs have been unable to communicate effectively by telephone with individuals outside of prison, unable to participate in educational, mental health, employment,

disciplinary, and other KDOC services, and unable to learn of daily life and safety alert and other notifications as effectively as hearing individuals in KDOC's custody.

102. In order to ensure effective communication, the ADA requires that "a public entity shall furnish appropriate auxiliary aids and services where necessary to afford qualified individuals with disabilities . . . an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity conducted by a public entity." 28 C.F.R. § 35.160(b) (1).

103. Auxiliary aids and services include, but are not limited to, "qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments," 42 U.S.C. § 12103, such as computer-aided transcription services, assistive listening systems, closed caption decoders, open and close captioning, TDDs, videophones, and videotext displays. 28 C.F.R. § 35.104.

104. Defendants subjected Plaintiffs to discrimination solely on the basis of their disability, in violation of their rights under the ADA. They have done this by failing to provide effective communication, and by not ensuring that adequate access to qualified sign language interpreter services and other auxiliary aids and services is made available to individuals with hearing impairments in KDOC's custody or under KDOC supervision.

105. In determining what type of auxiliary aid and service is necessary, "a public entity shall give primary consideration to the requests of the individual with disabilities." 28 C.F.R. §160(b) (2).

106. Defendants have failed to give consideration to Plaintiffs' requests, in most instances flat out denying them their requests for videophone services, or providing unfairly limited access to such services, for visual alert and notification systems, for interpreter services, and for other auxiliary aids and services.

107. On information and belief, the failure to provide effective communication and the failure to provide comparable access to services, benefits, activities, programs, or privileges are policies, regular practices, and/or customs of Defendants. These failures are ongoing and continue to this date.

108. Defendants' failure to provide appropriate auxiliary aids and services has subjected Plaintiffs to discrimination on the basis of their disability in violation of their rights under the ADA, in ways that include, but are not limited to, the following:

- a. inadequate access to sign language interpreters and other appropriate auxiliary aids and services to enable them to participate in and benefit from Defendants' programs;
- b. inadequate access to prison audio alerts and notifications; and
- c. inadequate access to telecommunication devices.

109. The DOJ regulation implementing Title II of the ADA also requires that public entities, either directly or indirectly through other contractual or private arrangements, provide disabled individuals with the same opportunities to participate and benefit from services as is afforded to other individuals. 28 C.F.R. 35.160.

110. The regulation states, in relevant portion, that “[a] public entity, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability—(i) [d]eny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service; (ii) [a]fford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others.” 28 C.F.R. 35.130(b)(1)(i)–(ii).

111. Defendants are in violation of this regulation directly and indirectly through private entities, by refusing to permit certain deaf and hard of hearing inmates to participate in vocational and employment opportunities because of their hearing disabilities.

112. As a proximate result of Defendants' violations of Plaintiffs' rights under the ADA, Plaintiffs have suffered and continue to suffer from discrimination, unequal treatment, exclusion (including exclusion from Defendants' services, benefits, activities, programs, and privileges), violations of their rights under the laws of the United States, financial loss, loss of dignity, frustration, humiliation, emotional pain and suffering, anxiety, trauma, embarrassment, and unnecessary loss of rights and privileges, including unnecessary disciplinary measures.

113. Defendants' failure to comply with the ADA has resulted, and will continue to result, in harm to Plaintiffs, as Plaintiffs will continue to be in the custody or under the supervision of KDOC and will continue to attempt to use or avail themselves of the services, benefits, activities, programs, and privileges of the Defendants. This harm will continue unless and until the Defendants are ordered by this Court to make modifications to the policies, practices, and procedures of KDOC pursuant to the ADA.

COUNT II

Discrimination on the Basis of a Disability in Violation of the Rehabilitation Act (29 U.S.C. § 794 et seq.)

(Against all Defendants by the Plaintiffs on behalf of themselves and a class of similarly situated individuals)

114. Plaintiffs allege and incorporate by reference each and every allegation above as if fully set forth herein.

115. The purpose of the Rehabilitation Act is to ensure that no "qualified individual with a disability in the United States . . . shall, solely by reason of [] disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. . . ." 29 U.S.C. § 794(a).

116. Plaintiffs are qualified "individual[s] with a disability" within the meaning of the Rehabilitation Act, 29 U.S.C. § 705(20).

117. Defendants receive “Federal financial assistance” within the meaning of 29 U.S.C. § 794(a).

118. The operations of KDOC and Defendants are “program[s] or activit[ies]” within the meaning of 29 U.S.C. § 794(b)(1)(A)–(B) and/or (b)(2)(B).

119. At all times relevant to this action, the Rehabilitation Act was in full force and effect in the United States and Plaintiffs had a right not to be subjected to discrimination on the basis of their disability by defendants. 29 U.S.C. § 794(a).

120. The DOJ regulation implementing the Rehabilitation Act clarifies the requirements for Federal financial recipients, including correctional facilities, stating that “[a] recipient that employs fifteen or more persons shall provide appropriate auxiliary aids to qualified handicapped persons with impaired sensory, manual, or speaking skills where a refusal to make such provision would discriminatorily impair or exclude the persons in the program receiving federal financial assistance.” 28 C.F.R. § 42.503(f).

121. Appropriate auxiliary aids include, but are not limited to, “qualified interpreters . . . and telephonic devices.” 28 C.F.R. § 42.503(f).

122. Defendants discriminatorily impaired Plaintiffs’ ability to communicate effectively with medical personnel, prison staff, and individuals outside of prison and/or excluded Plaintiffs from educational, vocational, and prison-wide announcements. They have done this by failing to provide appropriate auxiliary aids in violation of the Rehabilitation Act.

123. Defendant’s failure to provide appropriate auxiliary aids and services for individuals with hearing disabilities denied and continues to deny, on the basis of their disabilities, Plaintiffs the same access to Defendant’s services, benefits, activities, programs, or privileges as the access provided to hearing individuals.

124. On information and belief, the failure to provide appropriate auxiliary aids and services and the failure to provide comparable access to services, benefits, activities, programs or privileges are policies, regular practices, and/or customs of Defendants. These failures are ongoing and continue to this date.

125. Defendants' failure to provide appropriate auxiliary aids and services has subjected Plaintiffs to discrimination on the basis of their disability in violation of their rights under the Rehabilitation Act, in ways that include, but are not limited to, the following:

- a. inadequate access to appropriate auxiliary aids and services to enable them to participate in and benefit from Defendants' programs;
- b. inadequate access to prison alerts and announcements; and
- c. inadequate access to telecommunication devices.

126. Defendants have also violated Section 504 and its implementing regulation by excluding inmates who are deaf or hard of hearing from Defendants' employment and vocational benefits and opportunities. 28 C.F.R. 42.503(a).

127. As a proximate result of Defendants' violations of Plaintiffs' rights under the Rehabilitation Act, Plaintiffs have suffered, and continue to suffer, from discrimination, unequal treatment, exclusion (including exclusion from defendant's services, benefits, activities, programs, and requirements), financial loss, loss of dignity, frustration, humiliation, emotional pain and suffering, anxiety, trauma, embarrassment, unnecessary loss of rights and privileges, including unnecessary disciplinary measures, and injury to their health.

128. Defendants' failure to comply with the Rehabilitation Act has resulted in harm to Plaintiffs, and Defendants are liable to Plaintiffs for harm suffered. Defendants' failure to comply with the Rehabilitation Act will continue to result in harm to Plaintiffs, as Plaintiffs will continue to be in the custody or under the supervision of KDOC and will continue to attempt to

use or avail themselves of the services, benefits, activities, programs, and privileges of Defendants. This harm will continue unless and until Defendants are ordered by this Court to make modifications to their policies, practices, and procedures pursuant to the Rehabilitation Act.

COUNT III

Violation of Free Speech Rights under the First and Fourteenth Amendments of the United States Constitution

(Against all Defendants by the Plaintiffs on behalf of themselves and a class of similarly situated individuals)

129. Plaintiffs allege and incorporate by reference each and every allegation above as if fully set forth herein.

130. Under the First and Fourteenth Amendments of the United States Constitution, States “shall make no law . . . abridging the freedom of speech.” U.S. Const. amends. I.

131. 42 U.S.C. § 1983 creates a cause of action when a “person who under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws.”

132. The Individual Defendants are state actors, acting under color of Kentucky statutes and regulation in all activities relevant to this action, deprived and continue to deprive Plaintiffs of their freedom of speech, as secured by the First Amendment to the United States Constitution and made applicable to the States by the Fourteenth Amendment, by preventing Plaintiffs from communicating with people outside of the prison. Despite multiple complaints in writing to KDOC, KDOC through the official actions of the Individual Defendants, has denied

and continues to deny Plaintiffs access to telecommunication devices that would give them the ability and opportunity to communicate with people outside of prison.

COUNT IV

Violation of the Religious Land Use and Institutionalized Persons Act of 2000 “Substantial Burden on Religious Exercise” (42 U.S.C. § 2000cc et seq.)

(Against all Defendants by the Plaintiffs on behalf of themselves and a class of similarly situated individuals)

133. Plaintiffs allege and incorporate by reference each and every allegation above as if fully set forth herein.

134. Governments may not impose substantial burdens on the religious exercises of institutionalized persons even if the burden results from a rule of general applicability. 42 U.S.C. § 2000cc-1(a).

135. Plaintiffs are “institutionalized persons” within the meaning of The Religious Land Use and Institutionalized Persons Act of 2000 (“RLUIPA”). 42 U.S.C. § 2000cc-1.

136. As a department, agency, or instrumentality of Kentucky, LLCC and KSR are government within the meaning of RLUIPA. 42 U.S.C. § 2000cc-5(4).

137. KDOC and the Defendants have deprived and continue to deprive Plaintiffs of their right to the free exercise of religion, as secured by RLUIPA, by unlawfully imposing a substantial burden on Plaintiffs’ religious exercise. They have done this by failing to provide interpreters or other means for enabling Plaintiffs to effectively communicate at weekly worship services. The substantial burden defendants have imposed on Plaintiffs’ religious exercise affects programs or activities that receive Federal financial assistance.

138. Defendants’ failure to comply with RLUIPA has resulted in harm to Plaintiffs, and will continue to result in harm to Plaintiffs, as Plaintiffs will continue to be in KDOC’s custody and continue to be deprived of participation in weekly worship services unless and until

Defendants are ordered by this Court to make modifications to KDOC policies, practices, and procedures pursuant to RLUIPA.

COUNT V

Violation of the United States Constitution Free Exercise of Religion: First and Fourteenth Amendments (42 U.S.C. § 1983)

(Against all Defendants by the Plaintiffs on behalf of themselves and a class of similarly situated individuals)

139. Plaintiffs allege and incorporate by reference each and every allegation above as if fully set forth herein.

140. Under the First and Fourteenth Amendments of the United States Constitution, States “shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” U.S. Const. amend. I.

141. Defendants have, in their individual and official capacities, deprived and continue to deprive Plaintiffs of their free exercise of religion, as secured by the First Amendment to the United States Constitution and made applicable to the States by the Fourteenth Amendment, by discriminating against Plaintiffs because of their mode of speech and by substantially burdening their religious exercise.

142. Defendants’ failure to comply with the First and Fourteenth Amendments of the United States Constitution has resulted in harm to Plaintiffs, and will continue to result in harm to Plaintiffs, as Plaintiffs will remain in the custody of KDOC and continue to be denied adequate weekly worship services unless and until Defendants are ordered by this Court to make modifications to their policies, practices, and procedures pursuant to the First and Fourteenth Amendments of the United States Constitution.

COUNT VI

**Violation of the United States Constitution Freedom from Cruel and Unusual Punishment:
Eighth and Fourteenth Amendments (42 U.S.C. § 1983)**

(Against all Defendants by the Plaintiffs on behalf of themselves and a class of similarly situated individuals)

143. Plaintiffs allege and incorporate by reference each and every allegation above as if fully set forth herein.

144. Under the Eighth and Fourteenth Amendments of the United States Constitution, “[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” U.S. Const. amends. VIII.

145. Defendants have, in their individual and official capacities, deprived and continue to deprive Plaintiffs of their right to be free from cruel and unusual punishment as secured by the Eighth Amendment to the United States Constitution and made applicable to the States by the Fourteenth Amendment.

146. Defendants have systematically denied Plaintiffs access to basic human services and vital information during their incarceration. Defendants have failed to notify Plaintiffs of prison alerts, announcements, and safety instructions. Defendants refuse to provide Plaintiffs with individual hearing devices. Moreover, Defendants have not provided effective communication between Plaintiffs and prison officials and medical staff. Defendants’ actions place Plaintiffs at a substantial risk of serious future harm.

147. Defendants have actual knowledge of the unconstitutional conditions to which Plaintiffs were, and continue to be, subject, as Plaintiffs have submitted numerous written complaints to KDOC staff requesting that sign language interpreters and other auxiliary aids and services be made available to them and that an alternative notification system be installed.

148. Despite actual knowledge of the substantial medical and safety risks Plaintiffs face while in their custody, defendants continue to disregard Plaintiffs' medical and other needs in violation of the Eighth and Fourteenth Amendments of the United States Constitution.

149. Defendants' failure to comply with the Eighth and Fourteenth Amendments of the United States Constitution has resulted in harm to Plaintiffs, and will continue to result in harm to Plaintiffs, as Plaintiffs will remain in the custody of KDOC and continue to receive inadequate medical treatment and other services unless and until Defendants are ordered by this Court to make modifications to their policies, practices, and procedures pursuant to Eighth and Fourteenth Amendments of the United States Constitution.

COUNT VII

Violation of the Kentucky Civil Rights Act Provision of Interpreters (KRS 344.500)

(Against all Defendants by the Plaintiffs on behalf of themselves and a class of similarly situated individuals)

150. Plaintiffs allege and incorporate by reference each and every allegation above as if fully set forth herein.

151. The Kentucky Civil Rights Act provides that a "qualified interpreter shall be appointed in any proceeding before a board, commission, agency, or licensing authority of the state or any of its political subdivisions, when the principal party in interest or a witness is deaf, hard of hearing, or speech impaired." KRS 344.500.

152. KDOC, KSP, LLCC, and KSR are state agencies that sponsor many inmate proceedings before a state board, commission, or agency, including, for example, parole and disciplinary hearings.

153. Despite specific requests for interpreters, Plaintiffs have been subjected to many KDOC proceedings falling within the scope of KRS 344.500 without the aid of any interpreter, let alone a qualified interpreter.

154. Defendants, through their policies and practices, consistently fail and even refuse to provide adequate access to qualified interpreters during inmate proceedings that fall within the scope of KRS 344.500.

155. Defendants' failure to comply with the KRS 344.500 has resulted in harm to Plaintiffs, and will continue to result in harm to Plaintiffs, as Plaintiffs will remain in the custody of KDOC and continue to be unable to adequately participate in the Defendants' sponsored proceedings unless and until Defendants are ordered by this Court to make modifications to their policies, practices, and procedures pursuant to KRS 344.500.

COUNT VIII

Violation of the Kentucky Civil Rights Act (KRS 344.120)

(Against all Defendants by the Plaintiffs on behalf of themselves and a class of similarly situated individuals)

156. Plaintiffs allege and incorporate by reference each and every allegation above as if fully set forth herein.

157. The Kentucky Civil Rights Act provides that "it is an unlawful practice for a person to deny an individual the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation." KRS 344.120.

158. Defendants are state actors that fall within the Kentucky Civil Rights Act's definition of "person." KRS 344.010.

159. Despite specific requests for interpreters, videophones, and other accommodations to fully enjoy the goods and services purportedly offered by Defendants, Plaintiffs have been in a large part denied their requests. Plaintiffs continue to be discriminated against due to their disability and are unable to enjoy Defendants' accommodations.

160. Defendants, through their policies and practices, consistently fail and even refuse to provide the full scope of their available accommodations to Plaintiffs.

161. Defendants' failure to comply with the KRS 344.120 has resulted in harm to Plaintiffs, and will continue to result in harm to Plaintiffs, as Plaintiffs will remain in the custody of KDOC and continue to be unable to adequately enjoy the Defendants' goods and services unless and until defendants are ordered by this Court to make modifications to their policies, practices and procedures pursuant to KRS 344.120.

COUNT IX

Damages

(Against all Individual Defendants in their individual capacities by the Plaintiffs on behalf of themselves and a class of similarly situated individuals)

162. The individual Defendants, by their violation of the constitutional provisions and statutes specified above, have harmed Plaintiffs, and will continue to harm Plaintiffs, as Plaintiffs will remain in the custody of KDOC or under the supervision of KDOC and will continue to attempt to communicate with people outside prison. Plaintiffs are therefore entitled to recover from the Individual Defendants, in their individual capacities, the actual damages they have sustained by virtue of the Individual Defendants' conduct. In addition, Plaintiffs are entitled to recover from the Individual Defendants, in their individual capacities, punitive damages to punish the individual Defendants for their past violations and to deter future violations against Plaintiffs by these Defendants and until all Defendants are ordered by this Court to make the

modifications to their policies, practices, and procedures pursuant required by statute and the United States Constitution.

VI. REQUEST FOR RELIEF

WHEREFORE, Plaintiffs pray that the Court:

1. Certify this case as a Plaintiff class action pursuant to Rule 23(b)(2) and (3) of the Federal Rules of Civil Procedure;
2. Pursuant to 42 U.S.C. § 794(a), 42 U.S.C. § 12133, and KRS 344.450 award the named Plaintiffs and the class members recovery of any and all damages, incurred because of the Individual Defendants' actions, from the Individual Defendants in their individual capacities;
3. Preliminarily and permanently enjoin Defendants from refusing to provide the proper interpretative services, TTD, videophones, and other hearing devices that are required for deaf and hard of hearing inmates to fully participate in the programs offered by the federally funded prison system;
4. Preliminarily and permanently enjoin Defendants from refusing to provide the proper interpretative services, TTD, videophones, and other hearing devices that are required for deaf and hard of hearing inmates to fully participate in and benefit from the programs offered by these public entities;
5. Preliminarily and permanently enjoin Defendants from depriving Plaintiffs and Plaintiff class members of the protections of the First and Fourteenth Amendments of the United States Constitution pursuant to 42 U.S.C. § 1983;
6. Award prejudgment interest;
7. Award reasonable attorneys' fees;
8. Award monetary punitive and/or compensatory damages against the Individual Defendants in their individual capacities; and
9. Award Plaintiffs such other and further relief as the Court deems just and proper.

VII. JURY TRIAL DEMAND

Plaintiffs, by their counsel and pursuant to Federal Rule of Civil Procedure 38(b), hereby demand a trial by jury on all claims so triable in this action.

Respectfully submitted,

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