

Settlement Agreement

I. DEFINITIONS

1. "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 hearing aids, computer-aided transcription services, assistive listening systems, closed caption decoders, open and close captioning, TDDs, TTYs, videotext displays, written materials, 28 C.F.R. § 35.104, as well as Videophones, access to telephone relay services, and visual alert or alarm systems. For purposes of this agreement, Auxiliary Aids and Services does not include vibrating clocks or in-line amplifiers meaning VDOC will not automatically provide or pay for such devices.
2. "Deaf" persons means individuals who are unable to hear well enough to rely on their hearing as a means of processing information and who rely on Auxiliary Aids and Services to Effectively Communicate and who qualify as individuals with disabilities under the Americans with Disabilities Act as amended by the ADA Amendments Act of 2008. *See* 42 U.S.C. § 12102(4); P.L. 110-325. All inmates listed in Ex. A are Deaf persons. Inmates whose hearing is corrected by hearing aids so that they can understand the spoken word and communicate orally are not covered by this Agreement.
3. "Direct Threat" means a significant risk to the health or safety of the Deaf Inmate or others that cannot be reduced or eliminated by reasonable accommodation. A finding of Direct Threat must be based on and supported by objective evidence.
4. "Effective Communication" means communication with Deaf inmates that is substantially as effective as communication with the general inmate population, 28 C.F.R. § 35.160(a), and will, when necessary, include the provision of appropriate Auxiliary Aids and Services, such as Qualified Interpreters. Effective Communication affords an inmate who is Deaf an opportunity to participate in, and enjoy the benefits of, VDOC's services, programs, or activities that is substantially equal to that enjoyed by a similarly situated inmate who is not Deaf.
5. "Effective Date" means October 13, 2010.
6. "Offsite Medical Care" means medical care that is provided at a location not owned or operated by VDOC.
7. "Onsite Medical Care" means medical care that is provided at a VDOC facility, including medical care provided by third parties in facilities owned or operated by VDOC.

8. "Qualified Interpreter" means a person who is able to interpret effectively, accurately, and impartially, both receptively and expressively, with the individual Deaf inmate using any necessary specialized vocabulary. A Qualified Interpreter could include an ASL interpreter, a sign language interpreter using more English based signs, an oral interpreter, a cued speech transliterator or a tactile interpreter for a person who is Deaf/blind. For sign language interpreters, a Qualified Interpreter is one who holds one or more of the following current, valid certifications:

- Registry of Interpreters for the Deaf Certification as a CI/CT, CSC, MCSC, OTC, CDI or RSC;
- National Association of the Deaf (NAD) Certification Level 3, 4, or 5;
- NAD/RID National Interpreter Certification NIC, NIC Advanced or NIC Master
- A cued speech transliterator will be certified by the Cued Language Transliterator National Certification Examination.

A Qualified Interpreter may be provided by VDOC either in person, via video remote interpreting (VRI) or videoconferencing or other similar means.

The parties agree that future certifications that are the equivalent of these certifications will be considered valid minimum certification, so long as those certifications are kept current.

9. "TTYs" or "TDDs" means devices that are used with a telephone to communicate with persons who are Deaf or hard of hearing by typing and reading communications.
10. "VDOC employees," "VDOC staff," "VDOC personnel" include all employees, agents, and other staff of the Virginia Department of Corrections (VDOC) whose job responsibilities places them on a regular basis in contact with Deaf inmates, and the immediate supervisors of those employees, agents, or other staff.
11. "Video Remote Interpreting" (VRI) means video interpreting accomplished by use of video conference technology over high-speed internet lines.
12. "Videophone" means a telephone with a camera and screen for visual, real-time communications.
13. "VDDHH" means the Virginia Department of the Deaf and Hard of Hearing.
14. "VDOC" means Virginia Department of Corrections.

II. GENERAL POLICIES

A. Non-discrimination Based on Disability

VDOC will ensure that Deaf inmates in its custody in state correctional facilities or under post-release supervision by Community Corrections have full and equal enjoyment of its services, privileges, facilities, advantages, and accommodations as non-Deaf inmates similarly situated. VDOC shall provide Deaf inmates with access to services, privileges, facilities, advantages, and accommodations substantially equivalent to those offered to other non-Deaf inmates similarly situated who are in its custody in state correctional facilities or under post-release supervision by Community Corrections. VDOC retains the discretion to determine that certain activities present a Direct Threat of injury or death to Deaf inmates and may therefore choose not to provide such Deaf inmates substantially equal enjoyment of some of its services, privileges, facilities, advantages, and accommodations.

B. ADA Coordinator and Auxiliary Aids and Services Designees

VDOC has designated an ADA Coordinator and will maintain the ADA Coordinator position as required by law. The VDOC agrees that the ADA Coordinator shall be trained and knowledgeable concerning the requirements of federal and state law regarding VDOC's obligations to provide full and equal enjoyment of its services, privileges, facilities, advantages, accommodations to Deaf inmates, and the contents of this Agreement.

VDOC will notify counsel for the plaintiffs of the ADA Coordinator designee. The name and contact information for the ADA Coordinator will be kept updated on the VDOC website. The ADA Coordinator's name and contact information will also be posted in a secure area in any housing unit in which Deaf inmates are held.

Within thirty days of the Effective Date of this Agreement, VDOC will designate individuals at each facility where Deaf inmates are held and at any Probation and Parole Office where any Deaf former inmate is actively on post-release supervision, who will be responsible for coordinating and overseeing Auxiliary Aids and Services for Deaf individuals and for implementing this Agreement. These designees will be familiar with and knowledgeable concerning the contents of this Agreement, and responsible for implementing this Agreement. These designees, who are located at a state correctional facility, with the assistance of a Qualified Interpreter, will aid in the initial intake of all Deaf inmates.

VDOC agrees to train all Watch Commanders on the procedures necessary to satisfy this Agreement.

VDOC agrees that Deaf inmates will be given the opportunity to meet with the Warden or Assistant Warden of Operations at least quarterly. At these meetings Deaf inmates will have the opportunity, with a Qualified Interpreter, to discuss issues of importance to their community.

III. INITIAL CLASSIFICATION, ASSESSMENT, AND ASSIGNMENT

A. General Policy

VDOC will provide a Deaf inmate at a Reception and Classification Center with access to Qualified Interpreters. The purpose of this interpreter is to assist the Deaf inmate with medical, psychological, and educational testing and evaluation, and to help provide an explanation of prison policies and procedures, to include DOP 861—Inmate Discipline, DOP 866—Offender Grievances, and how to utilize the TTY, Videophone and other Auxiliary Aids and Services.

For male inmates, the Reception and Classification Center is Powhatan Reception and Classification Center (PCC). For female inmates, the Reception and Classification Center is Fluvanna Reception and Classification Center (FCC).

B. Hearing Assessment

As part of the Initial Classification, Medical staff will assess and if necessary test all inmates for Deafness or hearing impairments who demonstrate either during Initial Classification.

If Medical staff determines that an inmate is Deaf, Medical staff will note the disability in the inmate's institutional file.

C. Auxiliary Aids and Services Assessment

After Medical staff determine that an inmate is Deaf, VDOC will presume that Auxiliary Aids and Services in the form of Qualified Interpreters, visual notifications, telecommunication devices, and other aids and services set forth in this Agreement are necessary to ensure substantially equal services, privileges, facilities, advantages, and accommodations.

If a Deaf inmate indicates that he or she does not require any or all of the Auxiliary Aids and Services set forth in this Agreement, he or she will sign a Waiver of Auxiliary Aids and Services and that document will be kept in the inmate's institutional file.

D. Ensuring Staff Awareness Through Identification Cards

VDOC will take appropriate steps to ensure that all VDOC personnel having regular contact with a Deaf inmate are made aware of such person's need for Auxiliary Aids and Services so that Effective Communication with such person and the safety of the person will be ensured. Upon identifying an inmate as Deaf during Initial Classification, the inmate will receive a distinct identification (ID) card that clearly identifies him or her as Deaf. The ID card will signify to VDOC personnel that the inmate is Deaf, may not respond to oral commands, and may require Auxiliary Aids and Services. When staff take a Deaf inmate's ID card he or she will be given another indicator of their Deaf status.

All staff having regular contact with a Deaf inmate will be trained on the meaning of the distinct ID cards.

VDOC will post at the entrance to all facilities that house Deaf inmates, a notice clearly stating that the facility houses Deaf inmates and that the Deaf inmates carry an ID card with them. The Notice will include a picture of the ID card carried by deaf inmates. The Notice will also be posted outside each housing unit where Deaf inmates are held.

E. Interpretation of Written Materials

As of the Effective Date of this Agreement, and upon a Deaf inmate's filling out a Request for Auxiliary Aids and Services form at the facility where the requesting inmate is incarcerated, VDOC, will provide Deaf individuals written materials it provides to all inmates either, and at its discretion:

- in a recorded video sign language interpreted, or otherwise appropriately interpreted, format ("interpreted materials") (If VDOC chooses this option, VDOC would then provide the equipment necessary to view the interpreted materials);
- or by providing a Qualified Interpreter to permit the Deaf inmate to understand the contents of the written materials.

At the request of the Deaf inmate, VDOC will provide that Deaf inmate with the opportunity to meet with a VDOC staff member and a Qualified Interpreter to ask any questions regarding the written or interpreted materials.

F. Creation and Interpretation of Rights Materials

VDOC will provide each Deaf inmate with written materials outlining the rights of Deaf inmates, along with the services available to them as guaranteed by this Agreement, the ADA, and Section 504 of the Rehabilitation Act. All currently incarcerated Deaf inmates will also be offered these materials when VDOC begins using them. VDOC will create these written materials using language designed to be accessible to Deaf inmates. VDOC will provide these written materials to Deaf inmates with the orientation materials provided to all other inmates at Initial Classification.

VDOC will provide Deaf inmates with these written materials either:

- in a recorded video sign language interpreted, or otherwise appropriately interpreted, format ("interpreted materials") (If VDOC chooses this option, VDOC would then provide the equipment necessary to view the interpreted materials);
- or by providing a Qualified Interpreter to interpret these written materials to the Deaf inmate.

VDOC shall create the Rights Materials and begin using them within three months of the Effective Date of this Agreement.

G. Continuation of Provision of Auxiliary Aids and Services

After conducting the Initial Classification and documenting an inmate's hearing and Auxiliary Aids and Services assessments in his or her institutional file, VDOC will continue to provide Auxiliary Aids and Services to a Deaf inmate consistent with this Agreement, unless the Deaf inmate affirmatively indicates he or she does not want such services.

H. Subsequent Need for Accommodations

If an inmate is not found to have a hearing impairment at his or her Initial Classification, initially refuses, or does not request Auxiliary Aids and Services, but later believes that Auxiliary Aids and Services are necessary to ensure Effective Communication, he or she will fill out a Request for Auxiliary Aids and Services form. VDOC will provide the inmate who was initially not found to have a hearing impairment with a hearing assessment if so ordered by medical staff. If that individual is found to be Deaf, VDOC will follow the procedures as set forth in Section III.B-G of this Agreement.

IV. HOUSING

A. General Policy

VDOC has determined that it is in the best interests of VDOC and Deaf inmates to be incarcerated in one facility in order to provide them with the most effective Auxiliary Aids and Services. As of the date of this Agreement, VDOC has determined that Deaf male inmates will be housed at Powhatan Correctional Center,, and Deaf female inmates will be housed at Fluvanna Correctional Center. VDOC has the discretion to house Deaf inmates at whatever facility it deems appropriate.

At VDOC's discretion, if PCC or FCC is determined to be an unsafe or inappropriate facility for an inmate, that inmate will retain all rights as required by the ADA and this Agreement at any other facility where that inmate is housed.

B. Schedule of Accommodations

When a Deaf inmate is incarcerated at PCC or FCC, personnel at those facilities shall provide the Deaf inmate with a schedule showing when Qualified Interpreters and/or other Auxiliary Aids and Services are available. This schedule will be provided to currently incarcerated inmates within 3 months of the Effective Date of this Agreement.

V. PROVISION OF AUXILIARY AIDS AND SERVICES

A. General Policy

In order to ensure substantial equality for Deaf inmates, VDOC will provide appropriate Auxiliary Aids and Services, as required by this Agreement, the U.S. Constitution, the ADA, and the Rehabilitation Act. Substantial equality shall also include programs or services to Deaf inmates provided by third party vendors, contractors, or state-funded entities such as community colleges.

- Appropriate Auxiliary Aids and Services, including Qualified Interpreters, shall be made available so that Deaf inmates may participate in all services, privileges, and programs offered to other inmates in VDOC's custody at Powhatan Correctional Center or Fluvanna Correctional Center, as the case may be.
- These shall include, but not be limited to: orientation, medical evaluations and treatments, disciplinary proceedings, and during any other programs including, but not limited to, rehabilitative, educational, or transitional programs offered to other similarly situated incarcerated individuals.
- In those instances where VDOC permits volunteers to provide activities to inmates at PCC or FCC, such as religious services and meetings, VDOC will make best efforts so that the volunteer organization or individual volunteer has an interpreter at those activities. The parties agree that the Interpreter at such volunteer activities need not be a "Qualified Interpreter" as defined in this Agreement.
- VDOC retains the discretion to determine that certain activities present a Direct Threat of injury or death to Deaf inmates and may therefore choose not to provide such Deaf inmates substantially equal enjoyment of some of its services, privileges, facilities, advantages, and accommodations.
- VDOC will provide written instructions for the use of all Auxiliary Aids and Services. These instructions will cover, though not necessarily be limited to, use of TTYs and Video Phones.

B. Medical Devices

All Auxiliary Aids and Services required by this Agreement, the ADA, and Section 504 of the Rehabilitation Act, which are deemed medically necessary, will be provided promptly upon request free of charge to Deaf inmates subject to a co-payment for that medical device, just as non-Deaf inmates are charged a co-payment for other medical appliances or devices. This co-pay shall not apply, however, to hearing aid batteries. In the case of a Deaf inmate who is deemed indigent pursuant to VDOC Policy 802.2, the Deaf inmate's account will be charged the appropriate co-pay for such device just as non-deaf inmates are charged.

C. Maintenance of Auxiliary Aids and Services

VDOC shall maintain all Auxiliary Aids and Services for Deaf inmates in its custody in a state correctional facility in working condition at all times.

VI. QUALIFIED SIGN LANGUAGE INTERPRETERS

A. Contracts

VDOC will enter into one or more written contracts with Interpreter Service Providers (IS Providers), or otherwise arrange to provide Qualified Interpreters at the events and intervals set forth in this Agreement. The contracts with the IS Providers must specifically state that only "Qualified Interpreters," as defined in this Agreement, will be used by VDOC and that the IS Providers agree to provide only such interpreters to VDOC. If VDOC is currently bound by an IS Provider contract it will add this requirement at the next opportunity.

B. General Policy

VDOC will maintain the current rate of providing an in-person Qualified Interpreter two days per week for seven hours per day at PCC. If there is a material change in the number or needs of Deaf inmates, VDOC will reevaluate the number and/or frequency of in-person Qualified Interpreters.

VDOC shall provide an in-person Qualified Interpreter at FCC and other facilities where Deaf inmates are incarcerated as circumstances warrant.

Examples of situations in which an in-person Qualified Interpreter is presumed to be needed include:

- communications concerning medical care and attention, including dental, vision, audiological, and mental health care;
- disciplinary hearings in which the Deaf inmate may be charged with a rule infraction;
- transfer and classification processes that impact on the Deaf inmate's status; and
- transitional programming.

Examples of situations in which a Qualified Interpreter is not presumed to be necessary but in which a Qualified Interpreter may become necessary at a Deaf inmate's request include:

- educational programming;
- work programming; and

- other communications that are complex or lengthy.

VDOC will be responsible for scheduling and overseeing the provision of Qualified Interpreters.

C. Other Means of Communication

1. General policy

VDOC agrees that at all times VDOC employees will continue to attempt to communicate with Deaf inmates for such purposes and to the same extent, as they would communicate with the individuals but for their disability, using all available means of communication. This provision in no way lessens VDOC's obligation to provide Qualified Interpreters in certain situations and in a timely manner.

2. Video Remote Interpreting (VRI)

VDOC shall provide access to and have available for, emergency situations and as necessary, on-demand video remote interpreting which comports with the following standards at all facilities at which Deaf inmates are incarcerated:

- high quality, clear, delay-free full-motion video and audio over a high-speed Internet connection;
- a clear, sufficiently large, and sharply delineated picture of the interpreter's and the Deaf individual's heads, arms, hands, and fingers, regardless of the body position of the Deaf individual;
- voices being transmitted are clear and easily understood, and
- operation is uncomplicated and easily accomplished by non-technicians.

VDOC shall implement VRI within three months of the Effective Date of this Agreement.

3. Written Notes

VDOC Employees will receive training with respect to communications difficulties Deaf inmates have. The training will include advising the VDOC Employees that note writing may be the only immediate form of communication available to a Deaf inmate, and that VDOC Employees are expected to respond to a Deaf inmate in writing where that is the best present means of communication, to the same extent they would make a verbal response in a similar situation involving a non-Deaf inmate. Where circumstances make a written response impractical at the time, training will instruct that the VDOC Employee should attempt to follow up with the Deaf inmate as time later permits.

D. Onsite Medical Care

1. *General Policy*

VDOC will provide Qualified Interpreters for all scheduled appointments between Deaf inmates and medical personnel at VDOC facilities, including, but not limited to, review of medical history, medical appointments, follow up meetings or appointments, and treatment meetings.

2. *Informing Appropriate Medical Staff*

The VDOC employee responsible for coordinating Auxiliary Aids and Services for Deaf inmates at the facility at which a Deaf inmate is incarcerated, will ensure that Medical staff is aware that the inmate is deaf, if such classification has not already been performed by the Medical Staff at that facility. For each Deaf inmate, the Medical staff will note on the medical file cover in bold marking and in the inmate's medical file, the inmate's disability.

3. *Scheduling Medical Appointments with Interpreters*

The Medical Director in conjunction with facility staff, will schedule all medical appointments requiring Qualified Interpreters and will contact the IS Providers to arrange for interpreting services as necessary. Appointments for Deaf inmates will be scheduled within the same time period from the initial request as those for other inmates.

4. *Emergency Events*

VDOC will provide a VRI Qualified Interpreter for use in unscheduled medical emergencies. If remote interpreting services are not appropriate in the situation, VDOC personnel will work in conjunction with medical staff to attempt to secure an in-person Qualified Interpreter as soon as possible. Life saving medical care should never be delayed because no interpretation services are available.

For the following categories of Deaf inmates, a VRI Qualified Interpreter may not provide effective communication, and an in-person Qualified Interpreter may be the most appropriate auxiliary aid or interpretive service:

- Deaf inmates who have limited ability to move their heads, hands, or arms; vision problems; cognitive or consciousness issues; or pain issues;
- Deaf inmates who must be moved to areas of the VDOC facility that do not have a designated high speed Internet line; and
- Deaf inmates who will be treated in rooms where space considerations mitigate against using the service.

E. Offsite Medical Care

VDOC will inform all offsite medical providers that a Deaf inmate requiring a Qualified Interpreter or other Auxiliary Aid or Service will be seeking medical care offsite as soon as possible.

In the case of an emergency, VDOC will inform an offsite medical provider that a Deaf inmate requiring an in-person Qualified Interpreter or other Auxiliary Aid or Service is being transported to the offsite care provider. VDOC will notify the offsite medical care provider as soon as possible. Notification will include the estimated time of arrival.

F. Educational, Vocational and Rehabilitative Programming

VDOC shall provide appropriate Auxiliary Aids and Services for all programs offered at VDOC facilities in which Deaf inmates are qualified, admitted into, and are actively participating in. When the Schedule of Accommodations referenced in Section IV.B changes, including when a Qualified Interpreter will be available, an updated Schedule of Accommodations will be given to all Deaf inmates.

The following appropriate Auxiliary Aids and Services will be provided:

1. *VDCE Adult Basic Education*

The VDOC in conjunction with the Virginia Department of Correctional Education (VDCE) will provide Deaf inmates with written materials and open or closed-captioned educational materials where available. In addition, and as necessary, VDOC and VDCE will provide a Qualified Interpreter to interpret Adult Basic Education classes. The determination of what form of Auxiliary Aids and Services is appropriate will depend on a request by the Deaf inmate for such services and any input by the Instructor of the class.

2. *VDCE Community College Courses*

The VDOC in conjunction with VDCE, will provide Deaf inmates with written materials and open or closed captioned educational materials where available. In addition, and as necessary, VDOC and VDCE will provide a Qualified Interpreter to interpret Community College classes. The determination of what form of Auxiliary Aids and Services is appropriate will depend on a request by the Deaf inmate for such services and any input by the Instructor of the class.

3. *Vocational Programs*

VDOC, in conjunction with VDCE, will provide a Qualified Interpreter for Vocational Programs on an as needed basis.

4. *VDOC Correctional Enterprises Programs*

VDOC will provide a Qualified Interpreter for Correctional Enterprises Programs and meetings on an as needed basis.

5. *VDOC Rehabilitative Programs*

The VDOC will provide Deaf inmates with written materials and open or closed-captioned materials where available. In addition, and as necessary, VDOC will provide a Qualified Interpreter to interpret Rehabilitative programs. The determination to provide a Qualified Interpreter will depend on a request by the Deaf inmate for such services. Rehabilitative programs include such things as anger management classes, parenting classes, sex-offender classes, mandatory pre-release life skills classes, and other similar programs. The determination of what form of Auxiliary Aids and Services is appropriate will depend on a request by the Deaf inmate for such services and any input by the Instructor of the class.

VDOC will offer sign-language instruction to any inmate who becomes deaf after incarceration if such instruction is ordered by a medical professional or other expert employed or retained by VDOC.

G. Work Assignments

VDOC will provide opportunities for institutional work assignments that are consistent with the opportunities for the same assignments given to similarly situated non-Deaf inmates. VDOC retains the discretion to determine that certain work assignments present a Direct Threat of injury or death to Deaf inmates and may therefore choose not to provide Deaf inmates substantially equal opportunities to those work assignments.

H. Religious Services

VDOC shall allow and encourage outside volunteers to provide religious services accessible to Deaf inmates without regard to a volunteer's hearing ability as long as the volunteer meets the same security requirements that are imposed on all other outside volunteers.

No deaf offender will be required to attend a religious service where an interpreter is not provided in order to receive any religious meal, diet, or otherwise offered religious accommodation.

I. Transfer and Classification Matters

VDOC will provide a Qualified Interpreter for any hearings or meetings relating to an inmate's transfer to another facility or change in security classification or any other classification hearing involving the exchange of information between the Deaf inmate and VDOC personnel that could affect the inmate's status.

J. Transitional Programming — Post-Release Supervision (Including Parole)

VDOC will provide Effective Communication for all Community Corrections supervised post-release programs and activities. For lengthy or important communications, Effective Communication requires an in person interpreter or VRI.

VII. ADDITIONAL COMMUNICATIONS

VDOC will provide in person or VRI interpreting for any significant communication between inmates and staff that is not specifically discussed in this Agreement. A significant communication includes a communication for which the inmate requests an interpreter, subject to approval by the designated person responsible for coordinating Auxiliary Aids and Services.

VIII. DISCIPLINARY MATTERS

A. Qualified Interpreters For Disciplinary Proceedings

VDOC must provide Deaf inmates with a Qualified Interpreter in any disciplinary proceedings in which that Deaf inmate is a suspect or charged, and which is carried out under Operating Procedure 861 (Offender Discipline) or any replacement or supplemental disciplinary policies and procedures now in force or subsequently adopted by VDOC. A Qualified Interpreter must be available to the Deaf Inmate at the following stages of the above-described disciplinary proceedings:

- Staff investigations involving the exchange of information between the Deaf Inmate suspect and VDOC personnel, prior to filing a Disciplinary Offense Report or equivalent;
- Investigative interviews that involve the exchange of information between a Deaf inmate and VDOC personnel (such as when an adverse party is interviewed);
- Preparation of the Disciplinary Offense Report by the Reporting Officer which involves the exchange of information between the Deaf Inmate suspect and VDOC personnel;
- Supervisory Review of the Disciplinary Offense Report which involves the exchange of information between the Deaf Inmate suspect and VDOC personnel;
- During the Advisement of Rights/Service of the Disciplinary Report/Waiver of Hearing/Penalty Offer Process or equivalent proceedings, which involves the exchange of information between the charged Deaf inmate and VDOC personnel;
- During the Hearing, or any Re-Hearing which involves the exchange of information between the charged Deaf inmate and VDOC personnel.

Inmate or staff advisors will be provided to charged Deaf inmates on the same terms as they are provided to charged hearing inmates. Access to an advisor shall be the same for charged Deaf inmates as charged non-Deaf inmates. To the extent that a Deaf inmate has access to his advisor, a Qualified interpreter shall be made available to the Deaf inmate for any exchange of information between the Deaf inmate and his advisor.

B. Disciplinary Offense Reports

If a Disciplinary Offense Report is filed regarding a Deaf inmate and no Qualified Interpreter was provided to the inmate at the time of the pre-Report investigation or incident that led to the Report, the Officer in Charge shall meet with the Deaf inmate in the presence of a Qualified Interpreter to discuss the Report no less than 24 hours prior to when a Disciplinary Hearing has been scheduled.

C. Miscellaneous

If a Deaf inmate is a witness at a disciplinary hearing, VDOC will provide a Qualified Interpreter at the hearing.

VDOC must hold disciplinary hearings for Deaf inmates within the same time frame as it holds disciplinary hearings for non-Deaf inmates.

Nothing precludes a Deaf Inmate who is a suspect or charged with a disciplinary offense, from voluntarily waiving his right to a Qualified Interpreter and to proceed through any stage of a disciplinary proceeding without the benefits of a Qualified Interpreter. Nor shall failure of the VDOC to provide a Qualified Interpreter in and of itself constitute a sufficient basis for the charged Deaf Inmate to reverse or overturn any disciplinary sanction. However, if a deaf offender did not waive his right to a Qualified Interpreter the disciplinary hearing must be re-heard at a time that an interpreter can be present.

IX. VISUAL ALERT NOTIFICATIONS

A. General Policy

Deaf inmates incarcerated at VDOC state correctional facilities should not miss announcements, alarms, or any other auditory information from VDOC staff to the general inmate population solely because of their disability.

B. Relaying Information

VDOC shall provide an effective visual notification system that will notify Deaf inmates of prison wide events and events specific to Deaf inmates. VDOC has the discretion as to which type of notification system it shall employ, and to change that system, as it deems necessary.

C. Visual Alarms and Emergency Evacuation

VDOC will provide Deaf Inmates with an effective visual notification system which will advise them of an emergency evacuation or other emergency. VDOC has the discretion as to which type of notification system it shall employ, and to change that system, as it deems necessary.

VDOC personnel shall be responsible for the evacuation of Deaf inmates during an emergency.

X. TELECOMMUNICATION DEVICES

A. General Policy

VDOC will provide Deaf inmates in its custody with telecommunication devices so that they will have access to communication with people outside of VDOC that is substantially on the same basis as the access to telecommunication VDOC provides inmates who are not Deaf.

B. Monitoring Communications

VDOC may provide for the monitoring of communications between Deaf inmates and individuals outside of VDOC to the same extent and with the same discretion applied to the monitoring of communications between non-Deaf inmates and those outside of VDOC.

C. Additional Time for Communication

VDOC agrees that "equal access" may necessitate access that sometimes appears to be greater access. VDOC will implement a policy that allows Deaf inmates at least twice as many minutes to complete a TTY call as the number of minutes afforded other non-Deaf inmates to make regular phone calls.

D. Technology VDOC Will Provide

VDOC will make the following communication technologies available at its facilities where Deaf inmates are incarcerated to facilitate communication between Deaf inmates and people outside of VDOC facilities.

This list of technological equipment is not exhaustive. VDOC agrees to keep abreast of evolving technology and to consider adding additional equipment to reflect technological advances, as it deems appropriate.

VDOC state correctional facilities housing Deaf inmates will share a list of communications equipment available to Deaf inmates upon their arrival at the facility.

1. *TTY (teletypewriter)*

At every VDOC state correctional facility at which a Deaf inmate is incarcerated, VDOC shall provide at least one TTY in the telephone bank of each housing unit where any Deaf inmates are housed. At each facility where a Deaf inmate is incarcerated, VDOC shall keep an additional portable TTY unit for use when the regular TTY is broken or otherwise unavailable.

2. *Relay Services*

VDOC will enable all TTYs to access publicly available relay service phone numbers such as 711 and local 1 800 numbers. Inmates will not be charged any more than they currently are for the use of relay services.

3. *Videophones*

VDOC will allow Deaf inmates access to Videophone technology. Access to the Videophone will be made available at times that VDOC will designate. Those times may not be of equal length as access to the TTY. Subject to security concerns such as institutional lockdowns, the videophone generally will be made available during normal business hours. Normal business hours shall mean 8:30 a.m. – 5:00 p.m. Monday through Friday, excluding holidays. VDOC will also accommodate requests by Deaf inmates to use the videophone during nights and weekends to the best of its ability.

VDOC will enable all Videophones to access publicly available relay service phone numbers such as 711 and local 1 800 numbers. Videophones will allow voice carry-over relay.

On an annual basis, VDOC will reevaluate the hours during which access to the Videophones are permitted to determine whether, based on actual usage, weekday, weeknight, or weekend time should be modified. VDOC will continue to investigate means by which Videophones will be made available during the same times as regular telephones.

E. Responsibility for Maintaining Equipment and Training Staff

VDOC shall ensure that the technology used to permit communication between Deaf inmates and people outside of VDOC facilities is in working order. VDOC staff shall attempt to resolve complaints about any malfunctioning equipment within a reasonable time of receiving that complaint. VDOC will also ensure that designated staff members are adequately trained in the operation of the technology.

XI. MEDIA

VDOC will ensure that all audio-visual media purchased for inmate use in VDOC facilities housing Deaf inmates includes open or closed captioning.

Televisions which are purchased by VDOC for inmate use shall support open or closed captioning, and that captioning may be turned on at a Deaf inmate's request.

VDOC will permit Deaf inmates to purchase TV's which reliably support open or closed captioning with their own funds. In the event that the closed captioning feature contained on TVs purchased through the facility Commissary malfunctions, VDOC personnel will work with the Deaf inmate to address and resolve the problem.

XII. HAND RESTRAINTS

A. Off-site Medical Care

VDOC will implement an operating procedure relating to the handcuffing of Deaf inmates that will, whenever possible, permit Deaf inmates to use their hands for effective communication. That procedure will permit VDOC personnel to consider the needs of a Deaf inmate to use his or her hands for Effective Communication purposes. That procedure will also permit VDOC to consider the use of alternative restraints, such as a stun-belt, in lieu of handcuffs that restrain the hands in a way that prevents Effective Communication. VDOC shall have the ultimate authority relating to decisions about the use/non-use of hand restraints, and whether to keep a Deaf inmate shackled or unshackled. VDOC will vest responsibility for safety and security determinations with a supervisor and not the escorting officer.

B. On-site Medical Care

If a Deaf inmate is permitted to see medical personnel, at a time when for behavioral reasons, his or her hands have been restrained, VDOC personnel will consider the needs of the Deaf inmate to use his or her hands for Effective Communication purposes. VDOC personnel will also consider the use of alternative restraints, such as a stun-belt, in lieu of handcuffs that restrain the hands in a way that prevents Effective Communication. VDOC shall have the ultimate authority relating to decisions about the use/non-use of hand restraints, and whether to keep a Deaf inmate shackled or unshackled. VDOC will vest responsibility for safety and security determinations with a supervisor and not the escorting officer.

C. On-site Other Circumstances

If a Deaf inmate is being moved about a facility for any other purpose, at a time when for behavioral reasons, his hands have been restrained, VDOC personnel will consider the needs of the Deaf inmate to use his or her hands for Effective Communication purposes. VDOC personnel will also consider the use of alternative restraints, such as a stun-belt, in lieu of handcuffs that restrain the hands in a way that prevents Effective Communication. VDOC shall have the ultimate authority relating to decisions about the use/non-use of hand restraints, and whether to keep a Deaf inmate shackled or unshackled. VDOC will vest responsibility for safety and security determinations with a supervisor.

XIII. MISCELLANEOUS AUXILIARY DEVICES

Where devices such as vibrating clocks and in-line amplifiers are not deemed medically necessary, VDOC agrees to consider on a case by case basis, whether it will allow a particular Deaf inmate the opportunity to purchase these devices at his or her own expense. VDOC's decision in this regard will also consider whether these devices pose a security risk. VDOC shall have the discretion to make the determination whether any of these devices, and the type of device, is permissible. VDOC agrees to allow Deaf inmates to purchase headphones, in-line amplifiers/equalizers, and televisions that meet the particular needs of their disability from an approved vendor so long as the items do not pose a security risk. VDOC retains the discretion to limit purchases to devices available through the Commissary. Deaf inmates may submit a request in writing to the ADA Coordinator requesting devices not available from the Commissary. VDOC will not deny a Deaf inmate the right to purchase these devices except where they present a documentable security risk. The ADA Coordinator will maintain records of all Deaf inmate requests for these devices and the outcome of the request.

XIV. TRAINING

A. General Policy

VDOC, in conjunction with the VDDHH will provide training as defined in Section XIV.B below to all VDOC employees, as defined in this Agreement. VDOC and VDDHH will begin providing this training within three months of the Effective Date of this Agreement, and no less than annually thereafter. VDOC will incorporate this training into its regularly scheduled training for new and existing employees. VDOC may provide this training using in-person training, or via recorded training. VDOC will update the training materials as required by law. VDOC agrees to provide any materials that may be used for training to the Washington Lawyers' Committee for Civil Rights and Urban Affairs prior to the first training session for review and input. All such input will be considered in good faith.

B. VDOC Employees

Within three months of the Effective Date of this Agreement, VDOC in conjunction with VDDHH will begin training VDOC employees as that term is defined in this Agreement. Training will include the following topics:

- best practices in communicating with Deaf individuals;
- the unique needs and problems encountered by Deaf and late-Deafened individuals;
- identification of communication needs of persons who are Deaf;
- the psychological implications of Deafness and its relationship to interaction with hearing corrections personnel;

- the proper use and role of Qualified Interpreters;
- directions about using TTYs, TDDs, Videophones and other equipment currently available at the facility, which facilitates communication with Deaf people; and
- disciplinary matters, described in Section VIII, and grievance proceedings, described in Section XV.

XV. GRIEVANCES

The ADA Coordinator will review all grievances submitted by Deaf inmates, and responses given to Deaf inmates, whether the grievance is terminated favorably, or unfavorably to the Deaf inmate, to ensure compliance with this Agreement.

ADA Coordinator review under this section is not a part of the VDOC Inmate Grievance Procedure.

XVI. MONITORING AND COMPLIANCE

A. VDDHH Investigation

VDOC will permit, on a semi-annual basis, and for a five-year period following the execution of this Agreement, VDDHH access to each facility in which Deaf Inmates are housed, to conduct an investigation to determine VDOC personnel's treatment of Deaf inmates. During this investigation, VDOC will permit VDDHH (1) access to Deaf inmates who are willing to meet with them; (2) access to any Grievances that a Deaf inmate made during the preceding twelve-months, provided the Deaf inmate consents to such disclosure; (3) access to any medical records made during the preceding twelve-months, provided the Deaf inmate consents to such disclosure; (4) access to any non-security logs or other business records which VDOC keeps in the regular course of its business relating to Deaf inmates generally or any given Deaf inmate in particular prepared during the prior twelve month period; and (5) access to equipment provided to or for use by Deaf inmates.

B. Plaintiffs' Counsel Investigation

To the extent Plaintiffs' Counsel maintains a current attorney-client relationship with any Deaf inmate, they shall be provided the same access to that client and to the records relating to that client, as any other attorney with a similar relationship to another non-Deaf VDOC inmate.

In addition, and regardless of whether an Attorney-Client relationship exists, on an annual basis for a two-year period following the execution of this Agreement, Plaintiffs' Counsel shall have access to each facility in which Deaf inmates are housed to conduct an investigation to determine VDOC personnel's treatment of Deaf inmates. During this investigation, VDOC will permit Plaintiffs' Counsel (1) access to Deaf inmates who are willing to meet with them; (2) access to

any Grievances that a Deaf inmate made during the preceding twelve months, provided the Deaf inmate consents to such disclosure; (3) access to any medical records made during the preceding twelve-months, provided the Deaf inmate consents to such disclosure; (4) access to any non-security logs or other business records which VDOC keeps in the regular course of its business relating to Deaf inmates generally or any given Deaf inmate in particular prepared during the prior twelve month period; and (5) access to equipment provided to or for use by Deaf inmates.

XVII. NOTICE TO CURRENT INMATES OF AGREEMENT.

Within 30 days of the Effective Date of this Agreement, VDOC will deliver a copy of this Agreement and a notice to each non-Plaintiff Deaf inmate in its custody. The notice will inform the Deaf inmate of his or her rights under this Agreement to accept a monetary payment as set out in this Agreement in exchange for a release as outlined in Section XVIII.A of this Agreement.

XVIII. RELEASE AND SETTLEMENT OF CLAIMS

A. Release

In consideration of the representations, promises and agreements set forth herein, including the payments as set forth in this Agreement, the sufficiency of which is hereby acknowledged, the Plaintiffs, and any Deaf inmate who accepts a payment under this Agreement and executes a full and complete release, on their behalf and on behalf of their representatives, assignees, heirs, executors, family members, beneficiaries, administrators, successors, and anyone acting, or claiming to act on their behalf, hereby releases and forever discharges the Commonwealth of Virginia, its agencies, employees, agents, officials, and their representative, including but not limited to VDOC and VDCE, from any and all claims and causes of action, known and unknown, asserted and unasserted, direct and indirect, and of any kind, nature or description whatsoever, which they had on or before the date of the execution of this Agreement arising out of the facts set forth in the discrimination charge they filed with the U.S. District Court for the Eastern District of Virginia, Alexandria Division, except for the claim for an interpreter for weekly religious services at Powhatan Correctional Center brought by plaintiff Larry More.

B. Dismissal

The plaintiffs agree to dismiss with prejudice all claims of the Amended Complaint filed with the U.S. District Court, Eastern District of Virginia, Alexandria Division, Case Number 1:10-cv-96, except for the claim for an interpreter for weekly religious services at Powhatan Correctional Center brought by plaintiff Larry More, which the parties agree to dismiss without prejudice. The parties agree that, if a claim for an interpreter for weekly religious services at Powhatan Correctional Center is brought by Larry More in the future, the Defendants will not raise the defense of lack of exhaustion.

The parties agree that the Eastern District of Virginia shall retain jurisdiction over this settlement contract as set out in Subsection E of this Section.

C. Attorneys' Fees, Costs, Disbursements and Expenses

In settlement of all of Plaintiffs' claims arising out of their encounters with VDOC and VDCE up to and including the Effective Date, including any claims for attorney fees and costs, any disbursements and expenses, including experts fees incurred on behalf of Plaintiffs in this litigation, the parties agree that within sixty days of the Effective Date of this Agreement, VDOC shall pay plaintiffs' counsel \$248,476.21.

Counsel who brings an enforcement action on behalf of a Deaf inmate pursuant to Subsection E in this Section, and who obtains a judgment against VDOC or VDCE, will only be entitled to attorneys fees starting from the date of the filing of the enforcement action, and only at an hourly rate limited to 150% of the hourly rate established under 18 U.S.C.S. § 3006A, regardless of jurisdiction of the suit.

D. Damages

Within sixty days of the Effective Date of this Agreement, VDOC shall pay each named plaintiff \$750 in damages, provided each plaintiff shall execute a full and complete release of all claims. VDOC also agrees to pay within sixty days of the Effective Date of this Agreement all other Deaf inmates incarcerated in a VDOC facility, as of the date of this Agreement, the sum of \$250 in damages, provided any Deaf inmate accepting this sum, executes a full and complete release as outlined in Section XVIII.A. A list of currently incarcerated Deaf inmates is attached, and acknowledged by the parties to be full and complete.

E. Enforcement Powers

Only named Plaintiffs or Deaf inmates who are incarcerated in a VDOC facility as of the date of this Agreement, and who have received a payment for damages and executed a full and complete release of claims in this case, can maintain an action for breach of this Agreement, no other person shall be considered a third-party beneficiary of this Agreement.

1. Pursuant to 18 U.S.C. §3626(c)(2), during the term of the Agreement, plaintiffs may move the court for reinstatement of the lawsuit, or may elect to proceed in state court and seek specific performance or institute an action for breach subject to notification as set forth in paragraph 2 of this Subsection. An action to enforce this Agreement does not include any action for damages. A Deaf inmate seeking to enforce this Agreement in state court can only seek to have a court order VDOC or VDCE to comply with the terms of this Agreement.

2. The lawsuit may not be reinstated, nor a claim for breach or specific performance of this Agreement brought, before the Deaf inmate first notifies VDOC or VDCE of the nature of the alleged material non-compliance, and gives VDOC or VDCE 60 days to investigate and/or cure

the alleged breach. The parties agree to non-binding mediation prior to any plaintiff moving to reinstate the lawsuit or filing an enforcement action in state court.

XIX. MISCELLANEOUS PROVISIONS

A. Non-Admission

It is understood and agreed that this Agreement is a compromise of a disputed claim, facts, and allegations. Nothing in this Agreement constitutes an admission of any liability, wrongdoing, or violation of any law, or the admission of the validity of any defense.

B. Private Settlement Agreement

This Agreement is a private settlement agreement within the meaning of 18 U.S.C. § 3626.

C. Confidentiality

No part of this Agreement is or will be considered confidential by the parties. This Agreement will be made available by request under the Freedom of Information Act.

D. Entire Agreement

This Agreement constitutes the entire Agreement between the parties. There were no inducements or representations leading to the execution of this document, except as stated within the document itself. The terms of this Agreement are contractual in nature.

E. Binding

This Agreement is final and binding on the Parties, and any Deaf inmate who receives payment for damages and executes a full and complete release, including all principals, agents, executors, administrators, representatives, successors in interest, beneficiaries, assigns, heirs, and legal representatives thereof. Each Party has a duty to so inform any such successor in interest.

F. Non-Waiver

Failure by the plaintiffs or any Deaf inmate who receives payment for damages and executed a full and complete release to seek enforcement of this Agreement pursuant to its terms with respect to any instance or provision will not be construed as a waiver to such enforcement with regard to other instances or provisions.

G. Severability

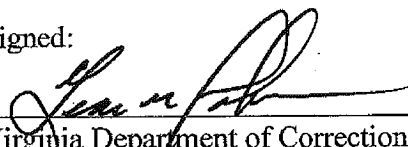
In the event that a court determines that any provision of this Agreement is unenforceable, such provision will be severed from this Agreement and all other provisions will remain valid and enforceable, provided however that if the severance of any such provision materially alters the

rights or obligations of the Parties hereunder, the Parties will attempt, through reasonable, good faith negotiations, to agree upon such other amendments to this Agreement as may be necessary to restore the Parties as closely as possible to the relative rights and obligations initially intended by them hereunder.

H. Term of Agreement

This Agreement shall remain in effect for 5 years from the Effective Date.


Signed:

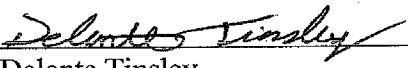

Virginia Department of Corrections
10-18-10
Date

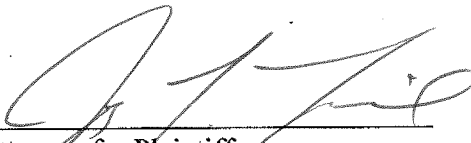
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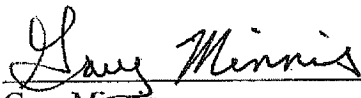
Tony Branch


Date

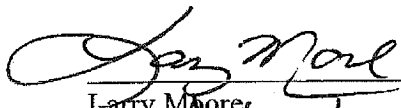

Ronald Roman
10/13/10
Date


Delonte Tinsley
10/13/10
Date


Attorney for Plaintiffs
10/26/2010
Date


Gary Minnis
10/13/10
Date


David Richardson
10-13-10
Date


Larry Moore
10/13/10
Date

Vernon Bugge

Printed Name

Vernon Bugge

Signature

10/13/10

Date

Michael E. Braham

Printed Name

Michael Braham

Signature

10/13/10

Date

Russell G. Himsley

Printed Name

Russell Himsley

Signature

10/13/10

Date

Derrick R. White

Printed Name

Derrick R. White

Signature

Date 10.13.10

John C. Farley

Printed Name

John C. Farley

Signature

Oct 13, 10

Date

Francis K. Cuffy

Printed Name

Francis K. Cuffy

Signature

10.13.10

Date

Jason Paul Smith #1008180

Printed Name

Jason P Smith
Signature

10/13/10
Date

Printed Name Anthony Neal Person

Anthony Neal Person
Signature

10/13/10
Date

Wesley Chase Jr
Printed Name

Wesley Chase
Signature

10.13.10
Date

DANIEL OTTEN #1403242
Printed Name

Daniel Otten
Signature

10-13-10
Date

JERRY OWENS

Printed Name

Jerry Owens
Signature

10-13-10
Date

Tony Branch
Printed Name

Tony Branch
Signature

Oct-18-10
Date

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