

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

AMENDED

CIVIL RIGHTS COMPLAINT FORM
TO BE USED BY PRISONERS IN ACTIONS UNDER 42 U.S.C. § 1983

Felix GARCIA

Inmate # 482246
(Enter full name of Plaintiff)

vs.

CASE NO: 4:07 cv-474-SPM/WCS
(To be assigned by Clerk)

JAMES McDONOUGH, SECRETARY,
MARTIE TAYLOR, STATE WIDE ADA COORDINATOR,
TOMMY YOUNG, ASST. WARDEN,
LONG, N. DO, CHIEF HEALTH OFFICER

(Enter name and title of each Defendant.)

If additional space is required, use the
blank area below and directly to the right.)

ANSWER ALL QUESTIONS ON THE FOLLOWING PAGES:

OFFICE OF CLERK
U.S. DISTRICT COURT
NORTHERN DISTRICT OF FLA.
TALLAHASSEE, FLA.

2007 DEC -6 PM 2:00

M

FILED

I. PLAINTIFF:

State your full name, inmate number (if applicable), and full mailing address in the lines below.

Name of Plaintiff: Felix Garcia
Inmate Number: 482246
Prison or Jail: Polk Correctional Institution
Mailing address: 10800 Evans Rd.
Polk City, Florida
33868 - 6944

II. DEFENDANT(S):

State the name of the Defendant in the first line, official position in the second line, place of employment in the third line, and mailing address. Do the same for every Defendant:

- (1) Defendant's name: JAMES McDONOUGH (4) Long N. DO
 Official position: SECRETARY, CHIEF Health officer
 Employed at: DEPT. of Corrections Polk Correctional Inst.
 Mailing address: 2601 Blair Stone Rd. 10800 Evans Road
Tallahassee, Fl. 32399 Polk City, Fl. 33868
- (2) Defendant's name: MANTIE TAYLOR
 Official position: STATEWIDE ADA COORDINATOR
 Employed at: DEPT. of Corrections
 Mailing address: 2601 Blair Stone Rd.
Tallahassee, Fl. 32399
- (3) Defendant's name: Tommy Young
 Official position: ASST WARDEN / ADA INTAKE
 Employed at: Polk Correctional Inst.
 Mailing address: 10800 Evans Rd.
Polk City, Fl. 33868

ATTACH ADDITIONAL PAGES HERE TO NAME ADDITIONAL DEFENDANTS

III. EXHAUSTION OF ADMINISTRATIVE REMEDIES

Exhaustion of administrative remedies is required prior to pursuing a civil rights action regarding conditions or events in any prison, jail, or detention center. 42 U.S.C. § 1997e(a). Plaintiff is warned that any claims for which the administrative grievance process was not completed prior to filing this lawsuit may be subject to dismissal.

IV. PREVIOUS LAWSUITS

NOTE: FAILURE TO DISCLOSE ALL PRIOR CIVIL CASES MAY RESULT IN THE DISMISSAL OF THIS CASE. IF YOU ARE UNSURE OF ANY PRIOR CASES YOU HAVE FILED, THAT FACT MUST BE DISCLOSED AS WELL.

A. Have you initiated other actions in state court dealing with the same or similar facts/issues involved in this action?
Yes() No(✓)

- 1. Parties to previous action:
(a) Plaintiff(s): N/A
(b) Defendant(s): N/A
2. Name of judge: N/A Case #: N/A
3. County and judicial circuit: N/A
4. Approximate filing date: N/A
5. If not still pending, date of dismissal: N/A
6. Reason for dismissal: N/A
7. Facts and claims of case: N/A

(Attach additional pages as necessary to list state court cases.)

B. Have you initiated other actions in federal court dealing with the same or similar facts/issues involved in this action?

Yes() No(✓)

- 1. Parties to previous action:
a. Plaintiff(s): N/A
b. Defendant(s): N/A
2. District and judicial division: N/A
3. Name of judge: N/A Case #: N/A
4. Approximate filing date: N/A
5. If not still pending, date of dismissal: N/A
6. Reason for dismissal: N/A

7. Facts and claims of case: N/A

(Attach additional pages as necessary to list other federal court cases.)

C. Have you initiated other actions (besides those listed above in Questions (A) and (B)) in either state or federal court that relate to the fact or manner of your incarceration (including habeas corpus petitions) or the conditions of your confinement (including civil rights complaints about any aspect of prison life, whether it be general circumstances or a particular episode, and whether it involved excessive force or some other wrong)?

Yes()

No(✓)

If YES, describe each action in the space provided below. If more than one action, describe all additional cases on a separate piece of paper, using the same format as below.

1. Parties to previous action:
 - a. Plaintiff(s): N/A
 - b. Defendant(s): N/A
2. District and judicial division: N/A
3. Name of judge: N/A Case #: N/A
4. Approximate filing date: N/A
5. If not still pending, date of dismissal: N/A
6. Reason for dismissal: N/A
7. Facts and claims of case: N/A

(Attach additional pages as necessary to list cases.)

D. Have you ever had any actions in federal court dismissed as frivolous, malicious, failing to state a claim, or prior to service? If so, identify each and every case so dismissed:

Yes()

No(✓)

1. Parties to previous action:
 - a. Plaintiff(s): N/A
 - b. Defendant(s): N/A
2. District and judicial division: N/A
3. Name of judge: N/A Case Docket # N/A
4. Approximate filing date: N/A Dismissal date: N/A
5. Reason for dismissal: N/A

6. Facts and claims of case: NIA

(Attach additional pages as necessary to list cases.)

V. STATEMENT OF FACTS:

State briefly the FACTS of this case. Describe how each Defendant was involved and what each person did or did not do which gives rise to your claim. In describing what happened, state the names of persons involved, dates, and places. Do not make any legal arguments or cite to any cases or statutes. You must set forth separate factual allegations in separately numbered paragraphs. You may make copies of this page if necessary to supply all the facts. Barring extraordinary circumstances, no more than five (5) additional pages should be attached. (If there are facts which are not related to this same basic incident or issue, they must be addressed in a separate civil rights complaint.)

1. FELIX GARCIA IS A STATE PRISONER CURRENTLY IMPRISONED AT POLK CORRECTIONAL INSTITUTION (POLK C.I.), IN POLK CITY, FLORIDA; A FACILITY LOCATED CLOSE TO HIS FAMILY RESIDENCE IN TAMPA, FLORIDA. GARCIA IS A HEARING IMPAIRED AMERICAN.

2. ON JUNE 26, 2007 GARCIA SUBMITTED A FORMAL REQUEST TO DEFENDANT YOUNG FOR "REASONABLE MODIFICATION OR ACCOMODATION" DUE, IN PART, TO HIS HEARING DISABILITY AND CHANGING CONDITIONS IN THE DEPARTMENT OF CORRECTIONS REQUIRING REASONABLE ACCOMODATION.

3. GARCIA'S REQUESTED ACCOMODATION WAS A REASONABLE ONE INAS MUCH AS THE PRISON SYSTEM HAS AUTHORIZED ITS INSTITUTIONS, IN ORDER TO REDUCE OR ELIMINATE MASKING NOISE LEVELS AND TO BE ABLE TO MONITOR AND CONTROL A GATHERING OF PRISONERS IN TELEVISION DAYROOMS, TO INSTALL MODULAR AUDIO LEVEL CUT-OFF EQUIPMENT WITHIN INSTITUTION TELEVISIONS (T.V.) SO AS TO CONVERT THE T.V. AUDIO TO A BOOSTED FM RADIO SIGNAL FOR AIR WAVE TRANSMISSION. THESE AUDIO DECODERS PERMIT T.V.'S TO BE TUNED DOWN

See ADDITIONAL PAGES

NOTE: EXTRAORDINARY CIRCUMSTANCES REQUIRE USE OF
ADDITIONAL PAGES.

To their lowest speaker level as "maximum TV volume" thus reducing the noise pollution for effective monitoring and control, while allowing prisoners to hear, understand, and clearly enjoy the TV audio through a canteen bought radio (sold with ear buds or optional headphones) at a personally selected audio level.

4. However, the radios being sold in the state-wide canteen are insufficient decibel levels for Garcia's impairment.² Accordingly, Garcia's accommodation requested that state institution (Polk C.I.) allow him authorization to have his family pay a "special vendor" for a speakerless AM-FM radio with the decibel level high enough to accommodate Garcia's hearing impairment and, as required, that the vendor mail the purchased radio directly to the institution for delivery to Garcia thus allowing him to hear radio and television decoded audio programming as afforded to other prisoners. (See Exhibit "A")

5. Defendant Young sent Garcia's "reasonable modifi-

1. Garcia entered prison as a teenager in 1981. Since then, he has had fourteen (14) operations to his hearing canals. As a result, he is now profoundly (totally) deaf in his left ear, and severely deaf in his right ear, requiring a powerful hearing aid just so he can barely hear.

ICATION OF ACCOMODATION Request" To Defendant Long N. Do, Chief Health officer (Pdk C.I.), for verification of Garcia's Disability and for the medical officer's Findings and opinion of the Requested Accommodation.

6. ON August 2, 2007, Defendant Long N. Do provided the following Discussion of Findings to Defendant Young:

Inmate's medical Record HAS been Reviewed. Inmate HAS Hearing Loss, He HAS Hearing Aid. Pdk C.I. HAS Provided "Reasonable Accommodation": Closed Caption T.V., Tdy Phone, Radio (Available through Canteen). I AM NOT sure "A Higher Decibel AM-FM Radio" may provide any better benefit than the Radio Available through the Canteen.

(Emphasis Added)

(see Exhibit "B")

7. Despite Defendant Long N. Do's "Not Being Sure" that Garcia's Requested Accommodation would or would not provide better benefit than the Radio Available

Through the Canteen, Defendant Young, on August, 3, 2007 Denied Garcia's "Reasonable Accommodation Request" without Requiring Further Substantive Inquiry.³ As the Institution's ADA Intake official and programs administrator, Defendant Young must insure that any changing circumstances to the programs and activities are equally accessible to handicapped prisoners. Defendant Young's failure to direct further reasonable inquiry, based upon Garcia's medical record and critical need following the modifications to the TVs that he himself ordered into effect, violated Garcia's right to meaningful opportunity to demonstrate right to reasonable access accommodation under the ADA. Defendant Young's Basis of Decision Reports as follows:

" Your issue has been addressed on DCR-530 which you filed on 6/26/07 and returned to you on 7/19/07,

2. Defendant Long N. Do's Findings do not reflect that the opinion was reached on basis of due consideration to any record of Garcia's test for severity of hearing loss; nor reflects any technical ascertainment of the effectiveness or ineffectiveness of the canteen sold radio. Additionally, the finding suggests that [A] closed caption TV would be a "reasonable accommodation" to literate-challenged hearing impaired prisoners. Doctor Long N. Do's failure to make a reasonable inquiry, based upon Garcia's medical record and critical need, violated his right to meaningful opportunity to demonstrate right to reasonable accommodation under the ADA.

Therefore will not be readdressed, A Copy of the DC2-530 HAS been forwarded to Ms. Taylor, ADA Coordinator, in Central office, for Her Review."
(Id. AT Exhibit "B")

8. ON August 23, 2007, Defendant MARTIE TAYLOR, STATEWIDE ADA COORDINATOR, CONCURRED WITH Defendant Young's Decision TO Deny GARCIA'S Reasonable Accommodation Request. IN Her Concurrence, Defendant TAYLOR Posits THAT The underlying Finding Expressed By Defendant Long N. DO (EXHIBIT "B") WAS AN opinion THAT WAS RATIONALLY ESTABLISHED from FACTS Considered, VIZ:

" Medical WAS Consulted AND IT WAS Their opinion THAT A Higher Decibel Radio would (sic) Be Any more effective THAN Those sold by the Canteen; therefore, the inmate's Request WAS Denied....

You may inform the inmate of my Concurrence of the Decision TO Deny His Request By A Copy of this memo." (see EXHIBIT "C")

AS A STATEWIDE ADA COORDINATOR, it is Reasonable TO SAY THAT Defendant TAYLOR is fully AWARE of the Requirements of Title II of the American with Disabilities Act (ADA), 42 U.S.C. 12141 et. Seq., governing STANDARDS of Accessibility, AND THAT the ADA AND SECTION 504 REQUIRE

provision of Auxiliary Aids when other prisoners HAVE Access To Telephones And Televisions, And That The LAW Requires That Policies And procedures must Also Be modified, in order To give prisoner's Access To Equipment That is Equal To the opportunity Given To prisoners with normal Hearing. Treating Defendant Long N. Do's Findings As presumptively Correct with nothing more violated GARCIA'S Right To HAVE Reasonable Access Accomodation under the ADA.

9. Because Defendant TAYLOR'S Concurrence erroneously Treated Defendant Long N. DO'S speculative inference AS A Conclusive opinion And Correct presumption Derived From "specialized (medical) Knowledge", GARCIA, ON August 26, 2007, Filed "Request for ADMINISTRATIVE Remedy" To Polk C.I. warden Tom TADLOCK. (see EXHIBIT "D").

10. Responding For warden TADLOCK, Defendant young Denied GARCIA'S Request for ADMINISTRATIVE Remedy. (see response, ATTACHED Hereto AS EXHIBIT "E"). Following ADMINISTRATIVE Rules, GARCIA, ON September 3, 2007, Filed Request for ADMINISTRATIVE Appeal of the Concurrence Denying "Reasonable modification or ACCOMODATION Request" TO THE SECRETARY, Florida DEPARTMENT of Corrections, Defendant JAMES McDonough AS the Respondent Superior Over The DEPARTMENT policies And Grievences. (see EXHIBIT "F")

11. On September 18, 2007, Garcia's Request for Administrative Review was received by Mr. Tom Bowden, Secretary McDonough's Representative. Mr. Bowden violated Garcia's Due Process rights to fair Administrative Remedy by Referring the matter [again] to the State wide ADA Coordinator, Defendant Martie Taylor, who provided the following response:

"The Response that you received at the institutional level has been reviewed and is found to appropriately address the concerns that you raised at the institutional level as well as the Central Office level In addition, the Head of the Security Department in the Central Office has determined that allowing radios other than those provided by the canteen are a security risk and are not to be allowed on the compound."

(See Exhibit "6"). In this purported Administrative Appellate Review of Defendant Taylor's Concurrence Decision to the office of the Secretary of Corrections, Defendant Taylor was allowed to Concur with her previous Concurrence (now as an Administrative Appellate Decision)

which was returned to Mr. Tom Bouden as a factual basis to deny further administrative review of her previous decision.

12. However, defendant Taylor included an addendum to her previous decision, viz:

"..... In addition, the head of the security department [not named] in the central office has determined that allowing radios other than those provided by the canteen are a security risk and are not to be allowed on the compound."

(Id at exhibit "6"). This addendum in the appellate decision is presumed governing policy over reasonable ADA accommodation by the Department of Corrections. Accordingly, the rationale or reasonableness of such governing policy, as it pertains to Garcia's claims, requires federal court guidance and disposition by court or jury. This Title 42, section 1983 action follows.

13. In this action, Garcia will show: (1) violation to equal access rights under law; (2) that federal law prohibits such violations; (3) that said federal law

Applies to Florida prisons and jails; (4) that other Florida Corrections institutions have accommodated such requests with no security risk (see Supporting Exhibit 1-3); (5) that such accommodations have been allowed to be purchased from other vendors to reasonably assist a prisoner to overcome or to aid in hearing loss with illiteracy (id); (6) that hearing impaired prisoners have transferred to Polk C.I. from other institutions with such accommodated radios, thus showing that radios, other than those sold by the statewide canteens, have been authorized and are allowed on compounds with no security risks.

14. Garcia's ADA claim is valid. He should not be subjected to retaliatory action, such as administrative or disciplinary confinement or transfer from Polk C.I., for seeking redress over violation of his right to promote personal dignity via a healthy rehabilitative effort through ADA accommodation to reasonably benefit over residual disabilities, as those created from his hearing loss (i.e. speech and pronunciation of words) and not just derive ability to hear. The ADA Anti-Retaliatory provision provides: No person shall discriminate against any individual because such individual has opposed any act or practice made unla-

ful By this CHAPTER or Because such individual
MADE A CHARGE, TESTIFIED, ASSISTED, or PARTICIPATED
IN ANY MANNER IN AN INVESTIGATION, PROCEEDING, OR
HEARING under this CHAPTER." 42 U.S.C. § 12203 (e).
GARCIA respectfully moves this Court, IF NECESSARY,
FOR LEAVE TO FILE A MEMORANDUM OF LAW IN SUPPORT
OF HIS CLAIMS AND RIGHTS.

VI. STATEMENT OF CLAIMS:

State what rights under the Constitution, laws, or treaties of the United States you claim have been violated. Be specific. Number each separate claim and relate it to the facts alleged in Section V. If claims are not related to the same basic incident or issue, they must be addressed in a separate civil rights complaint.

15. SECTION 504 OF THE REHABILITATION ACT OF 1973, TITLE 29 U.S.C. § 794, GUARANTEE PRISONERS WITH DISABILITIES EQUAL ACCESS TO ANY ENTITY THAT RECEIVES FEDERAL FINANCIAL ASSISTANCE, EITHER DIRECTLY OR INDIRECTLY. TITLE II OF THE AMERICAN WITH DISABILITIES ACT (ADA), 42 U.S.C. § 12141 ET. SEQ., EXTENDS THESE SAME RIGHTS TO PRISONERS IN ALL STATE AND LOCAL FACILITIES. THESE STANDARDS OF ACCESSIBILITY ARE SIMILAR UNDER THESE TWO LAWS AND, GARCIA CONTENDS, THE (SEE ADDITIONAL PAGES)

VII. RELIEF REQUESTED:

State briefly what relief you seek from the Court. Do not make legal arguments or cite to cases/ statutes.

GARCIA RESPECTFULLY MOVES THE COURT TO: ENTER AN ORDER DIRECTING DEFENDANTS TO GRANT THE REQUESTED "REASONABLE ACCOMMODATION" UNDER THE ADA, OR SHOW CAUSE HOW SUCH ACCOMMODATION IS NOT REASONABLE NOR OF BENEFIT TO PLAINTIFF. TO GRANT ANY EQUITABLE RELIEF AS THE COURT MAY DEEM APPROPRIATE IN THIS CAUSE.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING STATEMENTS OF FACT, INCLUDING ALL CONTINUATION PAGES, ARE TRUE AND CORRECT.

11-29-07
(Date)

Felix Garcia
(Signature of Plaintiff)

IF MAILED BY PRISONER:

I declare (or certify, verify, or affirm) under penalty of perjury that this complaint was (check one):
 delivered to prison officials for mailing or deposited in the prison's internal mail system on:
the 29 day of NOVEMBER, 2007.

Felix Garcia
(Signature of Plaintiff)

Revised 03/07

STATE CORRECTIONS Agency, through its Agents (named DEFENDANTS), HAVE VIOLATED. ADDITIONALLY, the Corrections Agency, through its Agents, NOT ONLY HAVE VIOLATED GARCIA'S EQUAL ACCESS RIGHT PROTECTIONS GRANTED UNDER SECTION 504 OF THE REHABILITATION ACT OF 1973, TITLE 29 U.S.C. § 794, BUT HAVE ALSO VIOLATED GARCIA'S RIGHTS TO BE FREE FROM DISCRIMINATION DUE TO HIS HANDICAP, AS GUARANTEED UNDER THE FLORIDA CIVIL RIGHTS ACT OF 1992, WHICH TRACKS THE FEDERAL CIVIL RIGHTS LAWS. THE GENERAL PURPOSE OF THE FLORIDA CIVIL RIGHTS ACT OF 1992 ARE TO SECURE FOR

“
 All individuals within the STATE Freedom From Discrimination Because ... HANDICAP...,
AND there by protect their interest in personal Dignity, To MAKE AVAILABLE TO THE STATE their full Productive Capacities, ... AND TO promote The interests, rights, AND privileges of individuals within the STATE.”

(EMPHASIS ADDED)

16. Title II of the ADA, the U.S. Department of Justice Regulation of Title II, 28 C.F.R. PART 35, AND THE ANALYSIS THERE TO, 56 FED. REG. 35694 (JULY 26, 1991) CLARIFY THE REQUIREMENTS OF SECTION 504, AND EVEN EXTENDS THEM TO INSTITUTIONS WHICH DO NOT RECEIVE FEDERAL FINANCIAL ASSISTANCE. THE DEPARTMENT OF JUSTICE REGULATION

TO TITLE II OF THE ADA ALSO SETS FORTH OTHER AUXILIARY AIDS AND SERVICES WHICH A STATE OR LOCAL CORRECTIONAL FACILITY MAY HAVE TO PROVIDE TO A DEAF OR HARD OF HEARING INMATE, VIZ:

"[Q]ualified interpreters, notetakers, Computer Aided Transcription Services, written materials, Telephone Handset Amplifiers, Assistive Listening Devices, Assistive Listening Systems, Telephones Compatible with Hearing Aids, closed Caption Decoders, open and closed Captioning, Telecommunication Devices for Deaf persons (TDD), video text, or other effective methods of making aurally delivered material available to individuals with hearing impairments"
(Emphasis Added)

28 C.F.R. 35.104. It is therefore clear that the ADA and Section 504, require provisions of these important Auxiliary Aids when other inmates have access to telephones and televisions. Thus, policies and procedures must yield when special changing circumstances take place in the Corrections system that would result in Denial of Accessibility.

17. Garcia contends that the installation of FM systems
7 B

ON prison Televisions to transmit sound via radio waves, is reasonable and is a valid penological objective to effectively monitor and to control the security over a large gathering of prisoners who come together for television viewing. The transmitters now installed within the prison televisions, broadcasts an FM radio signal to any number of listeners who own personal radios to reduce ambient noise levels; the normal television volume level is fixed or modified to its lowest possible audio range, which then is inputted to the transmitter. The transmitter volume is set at a fixed level controlling the FM radio signal volume output allowing the normal hearing prisoners to listen to the T.V. broadcast through ear or headphones at the radio volume they desire without disturbing others. Still, background noise, reverberation of distance between televisions and Garcia, and constant prisoners talking, are all amplified equally when using a hearing aid in the television dayrooms, leaving Garcia frustrated by the hearing difficulties. ³

3. There are four (4) televisions (only 1 is closed caption) in two open dayrooms that also include two game tables (one on each floor). There are no walls or barriers separating each of the dayrooms. In the TV viewing areas, the bench seating capacity accommodates twenty five prisoners per dayroom viewing area. This total amounts to 100 prisoners sitting on benches. However, there is a total of two-hundred twenty-four (224) prisoners assigned to the dormitory. If the additional 124 prisoners choose to view a TV program rather than play card games or remain in their rooms, they have to stand or sit on the floors and adding to the amplified noise level.

18. The RADIOS sold By the STATE wide Canteens are Low Quality (cheap) units with no Distortion Filtering. The EAR-phones (EAR Buds) sold with the RADIO are "mini units" THAT CANNOT support the increased volume input for A Distortion-free output when not using the Hearing Aid. Additionally attempting to insert both the Hearing Aid and the mini EAR Buds into the same AURAL Tube is impossible. GARCIA CANNOT purchase the "optional" over the EAR HEADPHONES to be placed over the Hearing Aid to thereby achieve the Amplification and Clarity for TV Listening, Because this only produces a High pitched Feed-back from the Hearing Aid Amplifier Coils Coming into CONTACT or into close proximity to the speaker magnet Coils.

19. GARCIA Requires A Higher Decibel RADIO with A wide RANGE EARPHONE THAT CAN be used with his Hearing Aid or AS A STANDALONE unit to help Combat the Extreme Background noise, DISTANCE, Feed-back, and echo THAT interferes with his understanding of clear Television Audio. His Request for the ACCOMODATION WAS AND is Reasonable Request. Indeed, GARCIA would be paying All Costs (through Family) For the purchase of his simple But necessary upgrade Compelled By Department Facility Reasonable Security modification.

20. the Department of Corrections (central office) contentions of "security risks" to allow a "higher Decibel Radio" on institution compound ⁴ requires Federal Court Resolution inasmuch as it is considered governing Policy over ADA rights to reasonable Accommodation

⁴ Garcia reiterates that the higher Decibel Radio sought is a simple "speakerless" AM-FM Radio that features high quality and low distortion filtering with a wide range noise reduction earphones; the dimensions of which are no bigger than the radios currently being sold by the state wide canteen.

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