UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
AT FRANKFORT

OSCAR ADAMS and MICHAEL KNIGHTS **Plaintiffs** v. **COMMONWEALTH OF KENTUCKY, et al.** **Defendants.**	Case No. 3:14-cv-00001-GFVT

Sixth Semi-Annual Report by the Settlement Monitor

April 23, 2019

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I. INTRODUCTION

Pursuant to the Court's order dated June 24, 2015, this is my sixth report to the Court and the parties concerning the status of compliance with this case's Settlement Agreement, which comprehensively governs how the Kentucky Department of Corrections ("Department" or KyDOC) deals with inmates who are deaf or hard-of-hearing. In my last report, filed December 2018, I explained that in this one, I would cover the results of the October 2018 round of self-reporting, and an assessment of audiology delays.[1]

As I described in my prior report, I have continued to use a semi-annual self-reporting tool; the most recent version, from October 2018, is attached as Appendix A. (This same document was also Appendix C to my December 2018 report). Responses to this questionnaire demonstrate that KyDOC has continued to make progress towards compliance. Some institutions have implemented a timely and effective audiology process, managed interpretive services effectively, and even worked on improving communication with hard-of-hearing inmates by providing new amplification devices. That said, the most recent self-reporting cycle reveals the widespread continuation of two different kinds of problems. Procedurally, some institutions continue to struggle with keeping and sharing the records needed to comply with the agreement and to check on that compliance, including when I make requests for follow-up. And substantively, self-reporting and follow-ups reveal crucial areas of compliance weakness—areas that I have seen and described consistently in several prior reports, as many as three years ago. These include:

- Identification, tracking, and reporting of inmates who are deaf/hard-of-hearing
- Ensuring prompt and accurate provision of audiology services
- Providing interpretation, both in-person and remote
- Providing videophone services.

I had hoped that by this report, institutions would have solved these matters and been able to move forward on issues that have emerged more recently, such as amplification and improvements like captioned telephones. But, unfortunately, the results of this most recent self-reporting cycle show that the earlier issues remain.

As in my prior reports, I thank the Department's personnel, both at headquarters and at the various affected institutions, for their work on implementing the improvements that are required by the Settlement Agreement, and their professionalism and accommodation of my requests for information. There has been significant turnover both in the ADA coordinator assignments. This has posed real challenges, but the new personnel have been working to learn about the ADA, deaf/hard-of-hearing prisoners, and the settlement requirements, and to manage their reporting and compliance obligations. (More recently, there has also been significant turnover at KyDOC headquarters, but I have not yet had much interaction with the new/acting Director of Operations or other headquarters leadership.) I thank the ADA coordinators, as well, for their corrections to a draft of this report that was shared with them on April 9, 2019.

[1] *See* Fifth Semi-Annual Report (Dec. 4, 2018), ECF 91, Pg.ID# 2241, 2244.

I am providing KyDOC a version of this report without redactions; for submission to the Court, I have redacted inmate names and ID numbers, to protect privacy.

This report has three Appendices:

Appendix A: October 2018 Self-Reporting Questionnaire
Appendix B: Memo from me to KyDOC headquarters, setting out all information missing from October 2018 self-reports as of January 25, 2018
Appendix C: Compiled recommendations

II. DEAF/HARD-OF-HEARING INMATES

As in prior reports, Table 1 tallies reported inmates who are deaf or hard-of-hearing (deaf/HOH). Deciding whom to include—both in the table and for purposes of tracking/reporting under the Settlement Agreement—requires some judgment. KyDOC's current process for identification of deaf/HOH inmates has two screening phases and then a fuller assessment phase. Inmates are given 10 written or verbal screening questions to identify any need for a hearing evaluation.[2] Those who answer "yes" or "sometimes" to one or more of those questions are then supposed to be further evaluated[3]; they are given either a whisper test[4] or examined with an audioscope.[5] If they fail the whisper test, or if they cannot hear at two or more

[2] *See* Exhibit B-2 to Site Visit Report, Kentucky State Reformatory (April 21, 2016), Second Semi-Annual Report, Appendix II, ECF 84-2, Pg.ID #1639; Appendix C, Recommendation 54 ("All inmates should also fill out, in writing or orally, the multiple-question hearing screening [in Exhibit B-2]."). The questions currently used are those I recommended: "1. I feel frustrated when talking to others. 2. I hear but I don't always understand what others are saying. 3. I hear but have trouble hearing when people speak softly. 4. I have trouble hearing others speak when they are not facing me. 5. People tell me to turn down the TV/radio. 6. I find it hard to hear when I am in a group setting. 7. I have trouble hearing on the telephone. 8. I need to ask people to repeat themselves when talking. 9. I have trouble hearing with noise in the background. 10. I have trouble hearing others when I am at a restaurant /chow hall."

[3] The documentation provided this cycle demonstrates that KyDOC's institutions are not consistent as to how many "yes" or "sometimes" responses are leading to further evaluation.

[4] The administrator of the "whisper test" stands at arms' length behind the patient (so he cannot read lips), and after instructing the patient to place one finger on the tragus of one ear to obscure sound, whispers three or four words towards the patient's other ear, and asks the patient to repeat the word back. The test is then repeated for the other ear. For KyDOC, if an inmate fails the test for either ear, he is referred to an audiologist. *See* Site Visit Report, Kentucky State Reformatory (April 21, 2016), Second Semi-Annual Report, Appendix II, ECF 84-2, Pg.ID #1601.

[5] An audioscope is a portable device for screening hearing; KyDOC policy states that it should be used at the 25 dB level at four benchmark frequencies (500 Hz, 1000 Hz, 2000 Hz, and

frequencies at the 25 dB level with the audioscope, their need for a hearing aid or other services is then assessed.[6]

Appropriately, KyDOC generally does not mark as deaf/HOH individuals who pass the whisper test or the audioscope test. Likewise, I do not tally them below (although they are included in Tables 4 through 6, in Part III.E's description of audiology processing). The criteria for inclusion in Table 1, and in the services covered by the Settlement Agreement, might be whether an inmate's impairment is significant enough to justify a hearing aid. I think this criterion is, however, inappropriate. Hearing aids are not useful for some individuals who have very significant hearing impairments; for example, several of the KyDOC inmates who are entirely deaf and sign to communicate do not use hearing aids. In addition, under KyDOC's current policy, a hearing aid is provided only if there's an impairment in *both* ears, even though a person who is deaf in one ear may require non-audiology accommodations under the Settlement Agreement. In addition, KyDOC's policy does not authorize a hearing aid for someone who can hear at the 30 dB level at all frequencies, even though that does constitute a (mild) impairment.

Accordingly, inmates who fail the whisper test or audioscope screening are considered to be at least mildly hard-of-hearing unless subsequent testing or treatment establish that there is no hearing impairment, even if they don't qualify for a hearing aid. Table 1 includes all such inmates in the Jan. 2019 column labeled "all." This includes 52 inmates who failed the whisper test or audioscope screening but declined further assessment. Those who *do* qualify for a hearing aid, or who are deaf but don't have a hearing aid because it would not assist them, are also tallied as "more severe" in Table 1's last column.

There are additional, timing-related complications affecting the tally in Table 1, which is a snapshot of a moving subject. The November 2018 count includes inmates who had left by November 2018, but who had been in custody at some point during the prior six months. The February 2019 count, by contrast, reflects data provided by KyDOC in the 2018-10 Report and partial updates since then. The February 2019 count is probably too low, because I have received more up-to-date information about individuals who have left KyDOC custody than about new additions to the tally. On the other hand, the February 2019 "all" category includes 61 inmates who failed initial screening but are not yet fully assessed; some of these will likely eventually be included in the "more severe" category, and some may prove not to have any hearing impairment at all.

Currently KyDOC has 9 inmates who sign to communicate; as of March 2019, they are housed at KCIW (2), KSP (2), KSR (2), LSCC (1), and LLCC (2). During the reporting period, one of the current KSP inmates was housed at NTC, and one of the current LLCC inmates at GRCC. See Table 2 for details.

4000 Hz). *See* KyDOC policy (May 8, 2018), Fifth Semi-Annual Report, Appendix D, ECF 91-4, PgID# 2363-64.

[6] *Id.*

Table 1: Distribution of Kentucky Deaf and Hard-of-Hearing Inmates

Institution	# of Deaf/HOH Inmates						
	~Nov. 2016	Apr. 2017	Nov. 2017	Apr. 2018	Nov. 2018	Feb. 2019	
						All	More severe
Bell County Forestry Camp (BCFC)	0	5	8	6	6	4	2
Blackburn Correctional Complex (BCC)	5	4	15	21	26	14	10
Eastern Kentucky Correctional Complex (EKCC)	9	11	30	44	51	46	22
Green River Correctional Complex (GRCC)	26	35	36	55	57	51	35
Kentucky Correctional Inst. for Women (KCIW)	13	13	10	11	11	14	11
Kentucky State Penitentiary (KSP)	6	11	13	19	28	26	15
Kentucky State Reformatory (KSR)	64	75	98	176	189	204	136
Lee Adjustment Center (LAC)	-	-	-	16	20	21	9
Little Sandy Correctional Complex (LSCC)	18	8	12	36	74	56	27
Luther Luckett Correctional Complex (LLCC)	6	26	39	96	94	75	52
Northpoint Training Center (NTC)	15	28	38	54	68	57	29
Roederer Correctional Complex (RCC)	10	16	16	24	20	11	7
Western Ky. Correctional Complex (WKCC)	5	10	31	47	45	42	18
Ross-Cash Center (Ross-Cash)	1	2	4	7	6	5	3
TOTAL	178	244	350	612	695	626	376

III. KNOWN PROBLEM TOPICS

My last report identified five areas with ongoing substantive compliance problems; this report includes the same five, and adds the procedural problem of poor reporting, discussed first.

A. Reporting Issues

The Settlement Agreement grants me "unlimited access to all records, files, and papers maintained by the KDOC that relate to the terms of this Agreement," Agreement XV.B.1.a, and authorizes me to "request . . . written responses to any questions . . . related to the implementation of the Agreement or issues in this litigation, so long as the request does not interfere with security obligations of KDOC staff members and employees." Agreement XV.B.1.e.[7] My requests have been comprehensive, both to allow adequate monitoring of compliance and also to assist KyDOC staff in understanding the documentation they need to maintain and themselves review, to facilitate compliance. I have, as previously reported, hoped in the final year of the Agreement's term to shift my compliance monitoring to oversight of self-audits, and my reporting requests have been aimed to move in that direction. Unfortunately, the vast majority of reports this most recent cycle were missing requested information. It frequently took many attempts and requests to receive the right information. This does not bode well for

[7] The Settlement Agreement is numbered in the version that is Exhibit B to my First Semi-Annual Report, ECF 83-1 (Feb. 4, 2016), Page ID# 1532-1555.

the transition to self-audits.

The most important categories of missing information were:

(1) *Individuals not being tracked as deaf/hard-of-hearing at a given institution.* In reporting to me the names and situations of their deaf/HOH inmates, 11 of the 13 institutions omitted at least one—for some, a dozen or more—of the inmates they should have been tracking and sharing information about. For many, the problem was that the inmate had been transferred to a new prison, and because no KOMS (Kentucky Offender Management System) alert had been entered, the ADA coordinator at the transferred-to prison did not receive a notification email on the transfer. For others, no transfer email seems to have been received notwithstanding the presence of a KOMS alert. In addition, two institutions—LLCC and LSCC—may have significantly *overreported*, including inmates whose hearing assessment demonstrates that they have no hearing impairment. This kind of overreporting can make it difficult for the ADA coordinator to focus his or her attention on the population that actually needs services or accommodations under the Settlement Agreement. See part III.B, below. (I say "may have" overreported because the documentation provided by LSCC is inconclusive on the appropriate status of some individuals.)

(2) *Documentation of audiology results.* For nearly all of the 13 institutions, I had to ask more than once—and for some of them, many times—for documentation that particular inmates did not qualify for a hearing aid. I have been asking for this information semi-annually since April 2017,[8] as well as during every site visit I have done. So I had hoped that now that the audiology process is governed by an objective standard,[9] the reporting would be smoother. In the event, however, obtaining the necessary documentation proved very difficult. For example, BCC initially provided written summaries instead of medical records containing the test results. Other institutions— EKCC, LAC, LLCC, and KSP—provided medical records that did not contain the audiogram results requested. As well, some institutions—KSP, LLCC, and NTC—informed me that the inmates had moved to different institutions, which does not obviate the need for documentation of determinations made prior to transfer. And one, EKCC, at first declined to provide documentation without getting releases from inmates—even though under the Settlement Agreement, no such releases are required.[10]

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[8] *See* Semi-Annual Compliance Reporting questionnaire (April 2017), Third Semi-Annual Report, Appendix VI, ECF 86-6, Pg.ID #2166.

[9] For a discussion of the development of KyDOC's current audiology standard, see Fifth Semi-Annual Report (Dec. 4, 2018), ECF 91, Pg.ID# 2244. The standard allows a single hearing aid for an inmate who can hear at 35 dB or louder in the better (that is, less impaired) ear, at two or more of four benchmark frequencies.

[10] *See* Settlement Agreement XV.B.1.a ("The Settlement Monitor will have unlimited access to all records, files, and papers maintained by the KDOC that relate to the terms of this Agreement."); HIPAA privacy rule, 45 C.F.R. § 164.512(d)(allowing disclosures for "health oversight activities" including "appropriate oversight of . . . entities subject to civil rights laws for which health information is necessary for determining compliance"); *id.* at (e)(1)(i) (allowing disclosures "in response to an order of a court or administrative tribunal").

After more than four months of back-and-forth, I have at this point received nearly (but not quite) all the requested documentation for inmates deemed ineligible for hearing aids. As described below in Part III.E, this documentation proved very important, because it demonstrated that in numerous instances, KyDOC providers were misapplying KyDOC's own audiology standard, applying too high a prerequisite both for full audiology testing and for hearing aid approval.

(3) *Programming/jobs and accommodations*. I asked each institution's ADA coordinator to report the following information (inter alia) for each inmate:

- Whether s/he has participated or sought to participate in any programming (educational, rehabilitative, substance abuse, religious, transitional, etc.—since April 1, 2018), what programs, what accommodations were provided, and with what result.

- Whether /she has participated or sought to participate in any work assignment since April 1, 2018, what assignment, what accommodations were provided, and with what result.

Seven of the thirteen institutions—EKCC, GRCC, KSP, LAC, LLCC, LSCC, and NTC—did not initially provide adequate information about the result of each individual's participation in programming or a work assignment. It took numerous individual follow-up messages and explanations to receive this information. And even after three emailed explanations to LLCC, I still did not receive the information, and just had to give up and get this report filed.

(4) *Delays in audiology results*. I asked each ADA coordinator to tell me how many inmates had experienced a delay in the audiology process, so that evaluation for/provision of hearing aids took more than 60 days.[11] Nearly every institution's answer tallied fewer late resolutions than actually occurred. The total admitted late audiology resolutions was 39; the actual number, as of October, was several multiples of that.

To demonstrate the general difficulties, I attach as Appendix B to this report a memo to KyDOC headquarters, which set out all the information missing as of January 25, 2018—that is, after three months of back-and-forth on various missing answers and documentation with individual ADA coordinators. The memo demonstrates the issues with this cycle of self-reporting. And to give even a fuller sense, consider LSCC (the institution that has had the most difficulty meeting its self-reporting obligations). My assistant and I have, between us, sent at least ten emails and made at least three phone calls to LSCC's ADA coordinator between November 25, 2018 and March 15, 2019. More precisely, here is the history of contacts:

[11] Appendix C, Recommendation 6: "Inmates in need of a hearing aid—both initially or because the device they have is no longer working for them—should wait no longer than two months to obtain the necessary device. That time period should begin the day the potential need is indicated by the inmate's request for evaluation, answers on the questionnaire, etc. Each KYDOC facility should track the time from request/questionnaire to provider visit to audiology visit to hearing aid provision, and ensure that inmates do not have a longer wait. (In future quarterly reporting periods, I will request this tracking data from all facilities.)"

- 11/25/2018: Email follow-up questions sent
- 12/10/2018: Check-in email sent
- 12/13/2018: Email received saying the answers would be provided on 12/14/2018
- 12/28/2018: Check-in email sent
- 1/11/2019: Check-in email sent
- 1/16/2019: Left phone message
- 1/24/2019: Check-in email sent
- 1/24/2019: Email received saying the answers would be provided that day
- 1/25/2019: Memo with questions emailed to headquarters and passed along
- 1/31/2019: Some answers received
- 2/2/2019: Follow-up questions sent by email
- 2/7/2019: Request for clarification received
- 2/10/2019: Clarification provided by email
- 2/13/2019: Left phone message
- 2/22/2019: Left phone message
- 2/27/2019: Some answers received
- 3/6/2019: Follow-up questions sent by email
- 3/14/2019: Check-in email sent
- 3/15/2019: Some answers received

Even after all this, many issues remained open at LSCC. I had no real expectation of getting answers to most of the questions, but LSCC finally sent answers after receiving this report in a draft that detailed for the Court the still-missing information. (Because LSCC finally did provide the information, I have cut the detailed description from this final version of the report.)

B. Identification and Tracking of Deaf/Hard-of-Hearing Prisoners

As I noted in my last report, problems remain with respect to identification and tracking of deaf/hard-of-hearing inmates, particularly when inmates are transferred. I had hoped this problem would have been solved by KyDOC's implementation of a uniform "KOMS" (Kentucky Offender Management System) alert—an entry in each affected inmate's online file that is supposed to allow the system-wide tracking of deaf and hard-of-hearing inmates. The ADA Coordinators are supposed to receive routine automated transfer memos listing incoming inmates for each institution with an annotation if they are deaf/hard-of-hearing.[12] But this self-reporting cycle makes clear that this is not happening reliably. First, KOMS alerts are not always present for each deaf/HOH individual. And even when a KOMS alert is present, institutions are

[12] *See* Appendix C, Recommendation 80: "At each institution, the ADA Coordinator should be one of the staff members who receives each routine transfer memo listing arriving inmates. The ADA Coordinator should check, in advance, to see if any arriving inmate has a disability that may need accommodation in order to provide effective communication and full information during the intake/orientation process, and should make arrangements for that accommodation to be provided." For my prior discussion of the KOMS alert system, see Site Visit Reports (Nov. 30, 2018), Exhibit B to Fifth Semi-Annual Report, ECF 91-2, Pg.ID# 2296.

not always receiving notice of transfers. As a result, individuals who are transferred sometimes are not tracked.

In addition, as described above, it has emerged that there is some confusion among the prisons about which inmates to track. For example, some institutions have improperly stopped tracking individuals who are not eligible for a hearing aid (but are still hard-of-hearing) or individuals who have refused further audiology services. Other institutions are continuing to track inmates who are not, in fact, hard-of-hearing. It's important for the KOMS alert to be attached to the right individuals, to ensure that necessary accommodations and services are provided. KOMS alerts for inmates who are *not* deaf/HOH make the tracking system less useful and distract attention from where it is needed.

What is needed at this point is a system-wide check of three things, with prompt solutions of any problems revealed: (1) Is a KOMS deaf/HOH alert present for each inmate who should have one? (2) Is a KOMS deaf/HOH alert present for any inmate who should *not* have one? (3) Why are transfer emails sometimes failing to issue (or failing to issue to an appropriate person)?

C. Telecommunications Services

Videophones. One of the areas in which KyDOC made the speediest progress in Settlement Agreement compliance was provision of videophones (and the ancillary remote interpretive services for relay phone services) to inmates who sign to communicate.[13] But nearly four years into the five-year settlement term, this round of self-reporting reveals two important problems. First, LAC, KyDOC's newest (private) institution, does not yet have a videophone installed either using a kiosk or a laptop program. Second and more generally, technical difficulties that seem to relate to prison firewalls continue to undermine the availability of videophone services systemwide. Outages have been common at all the institutions at which inmates rely on videophones whose telecom provider is the company Purple; I was alerted to such a problem most recently in late March, at KSR. As I have mentioned before,[14] if significant outages continue, an alternative or backup will be necessary. KyDOC headquarters officials need either to work with Purple to solve the problem or to switch to or add contracts with Sorenson, an alternative provider that seems to have fewer problems. Currently only KSP has contracts with both Purple and Sorenson, and it is the only prison where videophone access has not been interrupted by sustained outages.

Amplified telephones. I have recommended that each prison ensure that every group of phones for inmates include at least one volume-adjusted phone.[15] Progress towards compliance

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[13] Settlement Agreement IX.D.3.a required that deaf inmates at all KyDOC institutions have access to videophones by the end of August 2015. This was accomplished by the time of my first court report. *See* First Semi-Annual Report (February 2, 2016), ECF 83, Pg.ID #1510.

[14] *See* Fifth Semi-Annual Report (Dec. 4, 2018), ECF 91, Pg.ID #2242.

[15] Appendix C, Recommendation 74: "Each facility should improve access of hard-of-hearing inmates to telecommunications, by . . . (b) Informing them that amplified phones are available, and ensuring that at least one such phone, whose amplification is compatible with a

has been real, but it remains true that at least one institution—WKCC/Ross—still does not have volume-adjusted phones available in all the areas where they are needed by hard-of-hearing inmates. (BCC just recently installed such phones.) In addition, I have also recommended that more powerful portable amplifiers be made available for check-out by hard-of-hearing inmates.[16] But numerous institutions— BCRC, GRCC, KCIW, KSR, KSP, LAC, WKCC/Ross—do not yet have these. (However, KSR is considering getting these amplifiers.) Both these issues need to be solved.

Captioned Telephones. I have recommended that captioned telephones be made available, to allow access to telecommunications services by very hard-of-hearing inmates who cannot sign. At this point, several KyDOC institutions—LSCC, NTC, KSP, and KSR—are piloting the use of captioned telephones.[17] If their experience is positive, the rest should follow suit.

TTYs. TTY technology is old and cumbersome, and very few inmates wish to use it. Still, for those who do—usually inmates who do not know sign language, but who have a significant hearing impairment—it may be the only option for telecommunications. (Outside of prison, captioned telephones have often been a far more effective substitute for TTYs.) But there continue to be problems with the availability of TTYs and their instructions. As part of the October reporting cycle, I asked each ADA coordinator to provide me with the TTY instructions in use in his or her prison. For half the institutions— BCC, BCFC, GRCC, KSR, LAC, LSCC, and NTC[18]—the resulting documentation was inadequate. For all of these except GRCC, I received generic TTY instructions that come with the device, rather than institution-specific instructions explaining to inmates where to obtain the TTY, where to plug it in, how to get access to an outside line, and the other issues that make TTY use difficult in prison. This is particularly disappointing because in 2016, I provided all the ADA coordinators with sample instructions, leaving bracketed blanks to be filled in.[19] (At GRCC, the recommended instructions are used, but the blanks have not been filled in.) I will plan to do a round of TTY testing in April or May, and ask again for the instructions then.

D. Interpretive Services

Interpretive services are needed by inmates who sign to communicate; there are currently 9 such inmates in KyDOC custody. As Table 2 shows, they have moved around, demonstrating

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hearing aid but does not require one, is available in every group of phones used by any hard-of-hearing inmate."

[16] Appendix C, Recommendation 85: "Portable phone amplifiers should be made available at every institution."

[17] Appendix C, Recommendation 74: "Each facility should improve access of hard-of-hearing inmates to telecommunications, by: . . . (c) Providing access to captioned telephones, unless on investigation such telephones are not available in the institutional setting."

[18] EKCC provided an internal memo, not instructions.

[19] *See* Informational Pamphlet for Deaf and Hard-of-Hearing Inmates, Exhibit D-2 to Site Visit Report, Kentucky State Reformatory (April 21, 2016), Second Semi-Annual Report, Appendix II, ECF 84-2, Pg.ID #1763-66.

that each prison must be prepared to accommodate such an inmate if the need arises. That said, I am obviously more concerned about services that have been called up than those where the need is more hypothetical. The prisons and cells in Table 2 that are in bold are those where there was a need for interpretive services during 2018.

Table 2: KyDOC Inmates Who Sign

Inmate	EKCC	GRCC	KCIW	KSP	KSR	LLCC	LSCC	NTC	RCC
C A (676)					**2015 - present**				
R B (457)		2016		**mid 2018 - present**	2015-2016			**2017-2018**	
E B (628)	2017	2016-2017		2018		**mid 2018-present**		2016	2016
J C (848)			**2015 - present**						
K C (285)			**2015 - present**						
Ri H (622)					**2015 - present**				
M K (233021)				**2015 - present**					
J M (961)		**2017-2018**			2015-2017	**2019**			
J M (566)		2015-2016			2016-2018		**mid 2018 - present**		

Remote interpretation. As with videophone access, an area in which KyDOC institutions made early progress in settlement compliance was Video Relay Interpretation (VRI). I previously reported that each institution has a working VRI laptop. But this round of self-reporting reveals that LAC has not yet set up the laptop—and at KSP, where two inmates need access to it, the VRI laptop appears not to work. LAC does not have any inmates who sign to communicate, so this is a failure of preparation rather than a current problem. But at KSP, the issue is a matter of real urgency; access to interpretation is a core element of the ADA and the Settlement Agreement. At other institutions, however, there has been real progress. The other institutions that housed at least one inmate who signs during the reporting period were: GRCC, KCIW, KSR, LSCC, LLCC, and NTC. Table 3 shows what the VRI log for each of them reveals.

In-person interpretation. As I have emphasized in prior reports, for some situations—particularly those involving multiple speakers—in-person rather than remote interpretation is appropriate.[20] At this point, the seven relevant institutions have used in-person interpretation

[20] *See* Settlement Agreement VI; Appendix C, Recommendation 12 ("In-person interpretation should be provided to inmates who communicate by signing when it is necessary for effective communication. This includes during group classes in which student participation is

only in very limited situations. That said, at KCIW, in particular, it seems that the option is being appropriately considered, and it has been used both for repeat/routine and special situations—respectively, programming and misconduct investigation. Table 3 also shows the situation at the relevant institutions.

Table 3: Interpretation at Institutions with Inmates Who Sign

Institution	VRI log observations	Use of in-person interpretation from April 2018 to October 2018
GRCC	Log shows frequent use, but does not specify purpose—may be as a videophone substitute.	Used for programming: Substance Abuse Program (SAP) and Moral Reconation Therapy (MRT)
KCIW	Log shows frequent use by several staff members for one inmate.	Used for internal affairs investigation, when VRI was not effective.
KSP	Log demonstrates that VRI has been inoperative over an extended period of time.	None
KSR	Used for different types of encounters and several inmates.	Used for Narcotics Anonymous/ Alcoholics Anonymous, and for a parole hearing. Note: O[redacted] A[redacted] ([redacted]676) has complained that other requests for in-person interpretation have been inappropriately rejected.
LLCC	Regular training and software checks; very infrequent use for inmates.	None
LSCC	Appears to be used for several types of encounters, and several inmates, but mostly classification.	None, except for during my site visit
NTC	Cannot determine what the VRI is used for or whether it is working.	None

E. Audiology services

As previously reported, two problems with audiology services had been apparent: inconsistency and delay. Based on the self-reports and accompanying documentation, I can now conclude that these have not yet been solved.

Development of a consistent process and standard

As explained above, the first step of the KyDOC audiology process is that inmates are screened using a 10-question screening questionnaire; those whose responses indicate a hearing issue then receive further physical screening. See *supra* part III.B. My understanding/ recommendation had been that individuals would be rescreened whenever they transferred institutions, and also during their routine physicals (which occur annually for some and more

key, and in parole hearings. For other situations, an in-person interpreter should be provided if remote interpretation is unlikely to be, or has not been, effective.").

rarely for others, based on history and age). It has recently come to my attention, however, that at some institutions (including, at least, LSCC and NTC, and perhaps others), a new policy has been implemented, under which no screening is done during intake; the institution is relying, instead, on physicals and sick-call. This is not concerning for inmates who *completed* the intake process not very long before their transfer. But for inmates for whom the initial screening/intake process was ongoing at the time of transfer, the predictable result—which does in fact appear to be occurring—is a screening failure. This is particularly likely for speedy transfers out of RCC. For example, D[redacted] F[redacted] ([redacted]634) arrived at RCC in July 2018 and answered "yes" or "sometimes" to 9 out of 10 questions about hearing difficulties. The next step should have been a provider visit with a whisper test or audioscope. He was, however, transferred to LSCC in August 2018, prior to that next step's occurrence. LSCC reports that he is not being followed up because he "has never placed any sick call r/t to any hearing issues while housed here at LSCC." No sick call request should be required in these circumstances; an inmate cannot be expected to know that his prior screening is being disregarded because of a facility transfer. LSCC has also provided to me some documentation where a single question (do you have hearing issues) is substituting for the 10-question screening questionnaire. This is inappropriate. KyDOC can solve this problem in one of two ways: Everyone can receive the full 10-question screening during intakes to new facilities, as is occurring at many of the institutions. Or—more limited but more difficult, administratively, for everyone for whom an intake screening/process is incomplete at the time of transfer, the new facility can rescreen or continue the process.

A second process issue that I have described before relates to provision of hearing aids. The Settlement Agreement provides: "[T]he KDOC will provide all medically necessary hearing aids." Settlement Agreement VIII.B.2. As I previously reported,[21] to address inconsistent outcomes with respect to hearing aid provision, I worked with KyDOC to develop an objective standard for provision of a hearing aid. After review of Medicaid coverage and other comparison policies, the Department adopted the following standard, using benchmark hearing testing frequencies of 500 Hz, 1,000 Hz, 2,000 Hz, and 4,000 Hz.:

1) Inmates who have a threshold of 25 dB or higher in one ear at two or more of the benchmark frequencies shall be assessed to determine the need for an assistive device.
2) The PCP shall interpret the quantitative hearing test and assess the degree of hearing impairment at the benchmark frequencies separately in each ear.
    - If the degree of impairment in the better is <35 dB at two or more of the benchmark frequencies the patient may be provided with an over-the-counter amplification device ("pocket talker") if the PCP deems it appropriate.
    - If the degree of impairment in the better ear is 35 dB or higher at two or more of the benchmark frequencies, the PCP shall refer the case to the CCS regional medical director for a hearing aid.
3) The ear with the lower threshold (i.e., the better ear) shall determine the intervention offered. Two hearing aids shall be provided to a patient who meets the criterion for a hearing aid in both ears *and* meets at least one of the following requirements:
    - Legally blind

[21] Fifth Semi-Annual Report (Dec. 4, 2018), ECF 91, Pg.ID #2244.

- A compelling occupational, educational, or safety need for binaural hearing

This standard was finalized, with my sign-off, on May 31, 2018. I had previously reported[22] that until October 2018, a misunderstanding of the standard led to erroneous implementation and denial of hearing aids that are appropriate under the standard: the audiology testing was being done only down to the 40 dB level, even though the policy threshold is 35 dB. Quite a few retests were necessary. I had hoped that that previously reported misunderstanding would be the only one needing correcting. Unfortunately, it has turned out that there have been several other misunderstandings/misapplications of the policy. These have appeared in two situations, screening and evaluation:

For screening, some KyDOC institutions are using the "whisper test"—a provider stands out of sight behind the patient, who covers one ear; the provider whispers and if the patient cannot hear the whisper, he proceeds to audiological evaluation. Other KyDOC institutions are using an audioscope. More fully described in note 5, above, the audioscope allows less subjective testing, at 25 dB, as stated in the standard quoted above. Unfortunately, my review of medical records uncovered that in two institutions, KSR and WKCC, the audioscope was at least sometimes being set to 40 dB. This was too high a screening level under the policy. These individuals had to be rescreened, and when they were, several of them turned out to need further audiological evaluation.

Another process problem is that WKCC used pocket talkers (a non-prescription amplification device) as a screening tool in 2017 and early 2018: medical staff provided a pocket talker and proceeded to evaluate the need for a hearing aid only if the inmate continued to complain.[23] The result was significant delays in the audiology process; audiology evaluation is still in progress for at least two affected individuals whose hearing impairment was noted to KyDOC in 2017 or 2018—R[redacted] C[redacted] ([redacted]900) (still at WKCC), and T[redacted] G[redacted] ([redacted]357) (now at KSR).

For the evaluations themselves, when I was finally able to obtain audiogram results,[24] my review of those audiograms revealed that at least six inmates— H[redacted] H[redacted] (NTC [redacted]445), M[redacted] L[redacted] (EKCC [redacted]650), D[redacted] S[redacted] (LLCC [redacted]937), R[redacted] V[redacted] (LLCC [redacted]784), B[redacted] V[redacted] (KCIW [redacted]716), D[redacted] Y[redacted] (LLCC [redacted]60)—who qualify for hearing aids under KyDOC's policy had erroneously been denied. I referred these individuals to KyDOC medical staff who confirmed that the prior denials were erroneous, and put the hearing aid orders in process. The problem here was simple misreading of the audiogram. Some kind of quality control/review would solve the problem.

Finally, it seems that KyDOC providers are not aware of the provision in the policy that allows binaural (that is, two) hearing aids where there is "a compelling occupational,

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[22] *Id.*

[23] Site Visit Report (Nov. 30, 2018), Fifth Semi-Annual Report, Appendix B, ECF 91-2, Pg.ID #2306, 2308.

[24] See *supra* pp. 5.

educational, or safety need for binaural hearing." Since finalization of the policy, I am not aware of any inmate being given two hearing aids. In addition, W[redacted] D[redacted] (KSR [redacted]856) provided me with documentation that the provider at KSR told him that KyDOC's policy simply did not allow two hearing aids, without evaluating his "occupational, educational, or safety" needs. Only after my intervention did the ADA coordinator undertake, in early March, to ensure that such an evaluation would occur. I have not yet been told the result.

Delay

Delay in meeting audiological needs remains a very serious problem. Including all the information on hearing aid provision since the settlement was entered, KyDOC institutions have evaluated over 1000 inmates for hearing impairments (that is, have conducted a screening examination, not merely administered the screening questionnaire). About 700 inmates who failed this screening then qualified for further audiology evaluation/services. As Table 4 shows, 440 inmates have received hearing aids; the rest are split between declining services, leaving KyDOC custody prior to the completion of audiology evaluation, and medical providers determining that no hearing aid is necessary. (Table 4 omits two inmates for whom I do not know the resolution.) Timeliness in all this processing remains a major problem. My recommendation, made in December 2016, was for a two-month or less turn-around.[25] This has not been achieved; for inmates whose audiology needs were brought to the attention of medical staff in 2018, it took on average between 3 and 4 months for KyDOC to evaluate/meet those needs. That's just an average; resolution times of far longer were not uncommon in 2018.

Table 4: Audiology Services Overall

	All resolved since 7/1/2015			**Prison alerted to need in 2018**		
Outcome type	**N**	**%***	**Avg. days to resolution**	**N**	**%**	**Avg. days to resolution**
(a) Already had hearing aid	24	2%	NA	24	5%	NA
(b) Refused screening	18	2%	57	7	1%	12
(c) Passed screening: no impairment	313	28%	59	169	34%	32
(d) No hearing aid needed	175	16%	149	88	18%	101
(e) Refused further audiology services after failing screening	75	7%	156	25	5%	63
(f) Discharged prior to resolution	57	5%	177	26	5%	136
(g) Received hearing aid(s)	450	41%	190	160	32%	112
TOTAL resolved	**1,111**		**138**	**499**		**79**

* Sums to 101% because of rounding

[25] See Appendix C, Recommendation 6 ("Inmates in need of a hearing aid—both initially or because the device they have is no longer working for them—should wait no longer than two months to obtain the necessary device.").

Moreover, Table 4 somewhat overstates the speed of resolution, because there are 58 inmates whose audiology evaluation were still in process, as of the last report I received. I cannot specify a date, because it varies by the institution—and for some, I have gotten updates of both resolutions and new needs since October; for others, only of resolutions. (One additional inmate whose audiology issues are incomplete is not included because evaluation is paused while other health issues resolve). While 18 of the inmates tallied in Table 5 have been in process for three months or less, the oldest has been in process for over two years. The distribution is set out in the table.

Table 5: Ongoing Audiology Needs

Month prison alerted to the need (N = 58)			
Aug. 2017 (1)	Sept. 2017 (3)	Oct. 2017 (2)	Nov. 2017 (1)
Dec. 2017 (4)	Jan. 2018 (3)	Feb. 2018 (4)	Mar. 2018 (3)
May 2018 (2)	Jun. 2018 (3)	Jul. 2018 (5)	Aug. 2018 (2)
Sep. 2018 (2)	Oct. 2018 (2)	Nov. 2018 (3)	Dec. 2018 (4)
Jan. 2019 (6)	Feb. 2019 (7)	Mar. 2019 (1)	

If each of these had been resolved by mid-March 2019, they would have taken an average of 252 days—over 8 months—for resolution. Obviously by the time they are resolved, the average will be higher.

These summary statistics mask considerable variation among facilities. For example, looking at the four institutions with the most activity in 2018, KSR has resolved 205 and has 20 outstanding; LLCC has resolved 87 and has just 3 outstanding; LSCC has resolved 29 and has 12 outstanding, and RCC has resolved 43 and has 1 outstanding. Not only does RCC have just one in-process case, but it managed its cases in an average 47 days each, complying with my recommendation. KSR's average is 80 days on the resolved matters, and many of the 10% that are unresolved are quite old. LLCC's unresolved matters are very old, but very few in number. LSCC is the least successful: even though it has managed to process less than three quarters of its docket, the resolution time for them averages over 3 months, and those that are left average over 9 months in age. To summarize, standing out for timely processing is RCC (LLCC does very speedy screening, but is not timely for those inmates who fail screening). Raising particular concern for untimely processing are EKCC, LSCC, and NTC.

Table 6 examines the issue in detail, facility by facility.[26] The Table highlights several different measures of timeliness/delay: days to resolution for resolved cases, and percentage of total cases not yet resolved. Each institution should be aiming for an average resolution time well under 60 days both in general and even for those inmates who receive hearing aids, and for an unresolved percentage of under 15% at any given time. (I previously said the goal should be 25% unresolved at any given time, but on further consideration, I conclude that 15% is a more

[26] Table 6 and Table 4's figures do not match precisely, because Table 4 does not include inmates still in progress but Table 6 does include them—if their hearing need came to the attention of KyDOC in 2018.

appropriate goal, because 15% is two months of intakes—and resolution should take two months or less.)

My prior report on audiology statistics demonstrated more progress than this. Perhaps resolution times lengthened this past year because it took KyDOC time to work out the new audiology standard. Hopefully, the processes will now be smoother. Speedier resolutions should be greatly facilitated by the recent elimination of some or all of the trips to outside providers that had been needed for provision of hearing aids. It is my understanding that RCC now has a hearing booth, allowing audiology testing without transporting inmates to an outside provider. In addition, a number of institutions are using an online hearing testing service called Audicus, https://www.audicus.com/. Hearing aids are then shipped to the prison. The result is that no transportation is needed at any point in the process.

I have not heard complaints about the quality of the hearing aids provided, so it may be that this new efficiency is not creating any decrease in the quality of services provided. However, there is one significant down-side to the Audicus process: without an experienced professional administering the test, prison officials are less equipped to detect and respond to malingering. The ADA coordinator for KSP has shared with me suspicions that inmates are lying about their hearing impairments in order to get hearing aids they don't really need. It is not clear to me whether this is truly occurring—or why an inmate would want a hearing aid he does not need. (There should not be any kind of black market, because other inmates should also be able to get hearing aids they need.) But in any event, the provided audiologists' reports demonstrate that audiologists can and do occasionally observe that their audiology testing is unreliable because an inmates' responses are inconsistent or non-credible. One response KyDOC might adopt when malingering is suspected is to refer the inmate for testing by an audiologist rather than using the online Audicus test.

Table 6: Audiology Services by KyDOC Institution

	BCC	BCFC	EKCC	GRCC	KCIW	KSP	KSR	LAC	LLCC	LSCC	NTC	RCC	Ross	WKCC	**Total**
Total	17	2	15	20	11	13	227	6	90	41	22	44	3	36	547
Resolved															
N	17	2	12	19	11	11	207	5	87	29	20	43	2	35	499
Average Days	51	48	125	90	74	175	80	168	42	133	122	47	40	102	79
Ongoing															
N	0	0	3	1	0	2	20	1	3	12	2	1	1	1	47
Average Days			271	13		251	103	365	321	285	228	20	386	21	192
Resolved, in detail															
N:															
(a) Already had hearing aid	1	0	1	1	2	1	6	0	4	1	3	3	0	1	24
(b) Refused screening	0	0	0	0	0	0	6	0	1	0	0	0	0	0	7
(c) Passed screening: no impairment	2	0	3	0	0	3	89	0	58	6	3	0	0	5	169
(d) No hearing aid needed	4	1	4	3	2	4	28	2	8	6	4	8	0	15	88
(e) Refused further audiology services after failing screening	2	0	1	3	0	0	6	0	4	1	2	3	0	3	25
(f) Discharged prior to resolution	4	0	0	0	0	0	12	0	3	3	1	2	0	1	26
(g) Received hearing aid(s)	4	1	3	12	7	3	60	3	9	12	7	27	2	10	160
Average Days															
(a) Already had hearing aid	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
(b) Refused screening	.	.	.	.	.	.	12	.	13	.	.	.	.	.	12
(c) Passed screening: no impairment	68	.	130	.	.	68	39	.	9	74	152	.	.	28	33
(d) No hearing aid needed	17	20	141	222	32	240	111	168	78	48	132	39	.	85	100
(e) Refused further audiology services after failing screening	25	.	88	8	.	.	76	.	65	38	29	12	.	189	63
(f) Discharged prior to resolution	62	.	.	.	.	.	92	.	158	234	201	187	.	225	129
(g) Received hearing aid(s)	65	76	114	76	86	151	128	168	177	85	122	43	40	127	107

F. Effective Communication/Equal Access to Services for Hard-of-Hearing Inmates

As I noted in my last report, the complaint I continue to hear the most frequently in my monitoring is that hard-of-hearing inmates cannot hear announcements, programming, and staff orders. This leads to a denial of equal access to services, and also, on occasion, to disciplinary consequences. I said in that report that each institution needs to develop a way that hard-of-hearing inmates can get access to the relatively simple announcements of pill-call, chow, count, and other institutional events. And each needs a way to amplify more complex communications like those in educational and rehabilitative programming and the like.[27] The need extends to each religious, educational, and rehabilitative programming area.[28] This self-reporting cycle, I collected information on systems in place, which is tallied in Table 7.

Table 7: Amplification and Other Devices by Institution

	BCC	BCFC	EKCC	GRCC	KCIW	KSP	KSR	LAC	LLCC	LSCC	NTC	RCC	WKCC / Ross
FM radio as amplifier system		C		Y			C		Y	Y	Y		Y
Bed shakers	Y	Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	
Vibrating watches			Y				C		Y				
Vibrating alarm clocks	Y	Y		Y	Y	Y	C		C	Y		Y	
Pagers					Y	Y	Y						
Portable phone amplifiers	Y		Y	C					Y	Y	Y	Y	
Captioned telephone						Y	C			Y	Y		
Earphones for parole hearings (some provide only a way for inmates to plug in their own earphones)	Y	Y		Y	Y	Y	Y		Y		Y	Y	Y

KEY: Y: Yes (or on order as of 10/15/2018); Blank: No ; C: No, but under consideration

Although I asked for information on how these various devices are working, I did not receive sufficiently detailed answers to offer any systemic evaluation.

[27] *See* Fifth Semi-Annual Report (Dec. 4, 2018), ECF 91, Pg.ID #2244-2245.

[28] *See* Settlement Agreement V.A.2 ("Appropriate Auxiliary Aids and Services, including Qualified Interpreters, will be made available so that Deaf Inmates may have an equal opportunity to participate in all services, privileges, and programs offered to other similarly situated Inmates in the KDOC's custody."); I.2 (defining "Auxiliary Aids and Services" to include "assistive listening systems"); Appendix C, Recommendation 67 ("Each religious, educational, and programming area should have available a device to allow wireless amplification for individual hard-of-hearing inmates.").

IV. PRISON-BY PRISON COMPLIANCE OBSERVATIONS

Using both self-reports and inmate-provided information, this Part presents observations on each KyDOC institution.

BCC

Observed compliance issues

- The TTY instructions are generic, not particular; they do not provide sufficient guidance to actually instruct someone how to use the TTY at this prison. (Where should it be plugged in? How do you get an outside line? Etc.)

- BCC provided an outdated hearing screening questionnaire, not the one that should be in use. That said, from looking at the medical records, it appears that the correct version may be being used, at least sometimes.

- Although BCC reported that none of its inmates had to wait longer than sixty days to receive a hearing aid or to be deemed ineligible, in fact there were such delays for at least 6 (of 13) BCC inmates whose hearing impairment presented within the reporting period. These are: A[redacted] C[redacted] (225[redacted]) (65 days); S[redacted] D[redacted] ([redacted]075) (117 days); R[redacted] G[redacted] ([redacted]925) (92 days); C[redacted] H[redacted] ([redacted]472) (101 days, ultimately paroled prior to resolution); J[redacted] M[redacted]l ([redacted]718) (noticed on 8/24/18, later transferred to RCC and discharged prior to resolution); H[redacted] S[redacted] ([redacted]878) (68 days).

- I have not received documentation that D[redacted] M[redacted] ([redacted]375) is not eligible to receive a hearing aid. (Note, however, that I neglected to remind BCC that I needed this information.)

- When asked for documentation of ineligibility for a hearing aid, BCC initially provided written summaries instead of medical records containing the test results.

- At least one individual, C[redacted] H[redacted] ([redacted]472), did not receive an auxiliary aids/services assessment.

- The method stated for interpretation for inmates in restricted housing cells is to use the VRI through the RHU cell door. Given low visibility and the absence of a suitable surface, this probably won't work. BCC's ADA coordinator reports that this issue is currently under reassessment.

- W[redacted] B[redacted] ([redacted]894) filed a grievance in February 2018 about not being placed in what he called an "honor dorm," and instead being housed in Dorm 2, where deaf/hard-of-hearing inmates at BCC are housed. He stated that he does not use any special equipment, and therefore should be allowed to live in the more advantageous housing unit. His grievance was rejected: the Warden explained that inmates diagnosed as deaf/hard-of-hearing are limited to Dorm 2. I explained to prison officials that such a

blanket rule is inappropriate under the ADA.[29] I do not know if the particular decision in this case was correct or incorrect—it may be that Mr. B[redacted] requires services that cannot be practicably provided elsewhere. The particular dorm Mr. B[redacted] was concerned with has since been shut down; I do not know if the more general problem has been solved, so that hard of hearing inmates are not constrained to live in Dorm 2 without individualized consideration.

- The same inmate, W[redacted] B[redacted] ([redacted]894), contacted me and filed a grievance in November of 2018 regarding a general rule excluding deaf or hard-of-hearing individuals from certain jobs. The ADA Coordinator, Christy Peach, confirmed that the policy was a general rule, not an individual-specific determination of direct threat, as the ADA and the Settlement Agreement require. The prison changed this rule and Mr. B[redacted] was reevaluated and ultimately placed on the Governmental Services Program (GSP) job assignment waitlist.

Observed positive practices

- Dorm 2 Officer flashes lights for count and pill call; this is an appropriate non-auditory alert.
- VRI log demonstrates that it is being tested and training is being done.

BCFC

Observed compliance issues

- Overall, 2 individuals who completed the audiology process at BCFC during the reporting period, or who are in progress at BCFC, waited for over sixty days to receive a hearing aid or to be deemed ineligible. (The self-report stated that nobody had experienced a delay.) Affected inmates were: B[redacted] H[redacted] ([redacted]965) (417 days); J[redacted] J[redacted] ([redacted]656) (76 days).

- TTY instructions were generic, not particular; this was fixed in response to this report in draft.

Observed positive practices

- VRI Log shows it is being tested
- An inmate was given the job of ADA Aid, to assist with communications needs.

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[29] Appendix C, Recommendation 84: "In order to comply with the ADA's integration mandate, inmates may be offered the chance to be housed in any hard-of-hearing cluster, but may not be compelled to do so in order to receive the accommodations to which they are entitled." Site Visit Reports (Nov. 30, 2018), Exhibit B to Fifth Semi-Annual Report, ECF 91-2, Pg.ID# 2299-2300.

EKCC *(Reporting still incomplete)*

Observed compliance issues

- Six of the 8 EKCC inmates whose hearing impairment presented within the 2018-10 reporting period (Apr. 1 – Oct. 1) had to wait longer than sixty days to receive a hearing aid or to be deemed ineligible. This includes: B[redacted] B[redacted] ([redacted]937) (alerted 7/2/18, transferred to LSCC about February 2019, still ongoing); C[redacted] C[redacted] ([redacted]659) (219 days); F[redacted] D[redacted] (254 days); C[redacted] H[redacted] ([redacted]295) (88 days, ultimately refused accommodations); D[redacted] J[redacted] ([redacted]990) (92 days); J[redacted] T[redacted] ([redacted]038) (114 days). The self-report said that just 1-2 inmates had experienced a delay.

- As the ADA coordinator reported to me in October, the KyDOC ADA Coordinators webpage, https://corrections.ky.gov/Facilities/AI/Pages/ADA-Coordinators.aspx, did not have up-to-date information for EKCC. The ADA coordinator stated then that "I am arranging for its correction by the beginning of next month." Several months later, this update still has not taken place.

- Inmates do not receive a hearing screening upon arrival at EKCC. This is appropriate only if they have gotten a screening within the past several years. But there does not seem to be a process that checks for that.

- The stated plan for videophone outages is: "Contact[ing] someone who can sign for them." This is not an adequate plan.

- For several individuals, the date of last hearing assessment and date of last auxiliary aids/services assessment was reported as "not listed" or "not needed."

- There is not a KOMS alert present for each deaf or hard-of-hearing inmate, and the ADA Coordinator doesn't have access to the system to create a KOMS alert, so cannot solve the problem.

- At first, EKCC declined to provide necessary documentation without releases from inmates. This was then sorted out and documentation provided.

- When asked for documentation of ineligibility for a hearing aid, EKCC initially provided medical records that did not contain the audiogram results requested.

- At least one inmate, M[redacted] L[redacted] ([redacted]650), was assessed as ineligible for a hearing aid, even though his audiogram showed that he fit the KyDOC policy criteria, and that the audiologist recommended one. I was able to correct the mistake only because I received the requested documentation.

- This institution did not initially provide adequate information about the result of each individual's participation in programming or a work assignment. It took numerous individual follow-up messages and explanations to receive this information.

- As at other institutions, EKCC hosts long-distance parole hearings. In the event someone who is hard-of-hearing has a parole hearing, earphones would be necessary for effective

communication. But EKCC does not have such earphones.

- The audiology records show fairly frequent conclusions by consulting audiologists of malingering. It would be useful for prison staff to try to figure out what is causing this issue and address it. That is, what gain do prisoners think they will obtain if they get a hearing aid they do not need?

Observed positive practices

- Good summary of available resources in Inmate Handbook.
- The appointment of a "Deaf and Hard-of-Hearing liaison" seems to be providing good information to inmates and more responsive accommodations.

GRCC

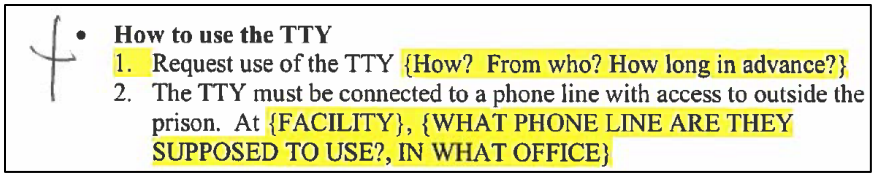
Observed compliance issues

- Four of the 10 GRCC inmates whose hearing impairment presented to KyDOC within the 2018-10 reporting period (Apr. 1 – Oct. 1) had to wait longer than sixty days to receive a hearing aid or to be deemed ineligible. This includes: D[redacted] C[redacted] ([redacted]943) (76 days); B[redacted] S[redacted] ([redacted]722) (83 days); D[redacted] S[redacted] ([redacted]937) (143 days); B[redacted] S[redacted] ([redacted]014) (294 days). GRCC's self-report was that there were no such delays.

- This institution did not initially provide adequate information about the result of each individual's participation in programming or a work assignment. It took numerous follow-up messages and explanations to receive this information.

- GRCC has evidently had some issues with effective communication of announcements; these need to be solved.
  - Inmate K[redacted] L[redacted] ([redacted]525) filed a grievance on 5/17/18 asking to be moved to the lower walk to hear announcements. Full documentation has not been provided, but GRCC reported that he was moved. In addition, the response to his grievance about staff failure to use the PA system explained that investigation had revealed that on some of the units, the PA system was not working. The prison substituted (electric, I think) bull horns; these need to be tested for their effectiveness for hard-of-hearing inmates.
  - C[redacted] N[redacted] ([redacted]631) reports that some of the staff at GRCC does not use the PA system to notify individuals about what is going on. He says that they just yell and sometimes say the PA system is broken, even though it works for certain COs. Because of that, he says, he cannot hear announcements.
  - R[redacted] T[redacted] ([redacted]210) reports that he is unable to hear announcements because the announcements are made by COs yelling instead of over the intercom system. In one related incident, Mr. T[redacted] was threatened with a write-up.

- The TTY instructions provided to me are the precise file I gave to the prison—with several areas still awaiting prison-specific information:



- **How to use the TTY**
1. Request use of the TTY {How? From who? How long in advance?}
2. The TTY must be connected to a phone line with access to outside the prison. At {FACILITY}, {WHAT PHONE LINE ARE THEY SUPPOSED TO USE?, IN WHAT OFFICE}

- E[redacted] B[redacted] ([redacted]628), who signs to communicate, received a write-up on 8/29/18. The documentation of the write-up does not indicate that a VRI or interpreter was used to communicate with Mr. B[redacted].

- The videophone was inoperative for at least two months during the 2018-10 reporting period. But the ADA coordinator worked out a substitute, using the laptop VRS.

- D[redacted] W[redacted] ([redacted]064) reported that when he was transferred from GRCC to KSR, his hearing aid was not transferred with him.

Observed positive practices

- Hearing aids are provided on-site.
- In-person interpreter provided for SAP and MRT

KCIW

Observed compliance issues

- Two of the 7 individuals whose hearing impairment presented to KyDOC within the 2018-10 reporting period (Apr. 1 – Oct. 1) had to wait longer than sixty days to receive a hearing aid or to be deemed ineligible: M[redacted] H[redacted] ([redacted]192) (63 days); T[redacted] R[redacted] ([redacted]805) (110 days).

- KCIW incorrectly deemed B[redacted] V[redacted] ([redacted]716) ineligible for a hearing aid. Later, after I noted the error, she was issued a hearing aid. Ultimately, 156 days passed between the date KyDOC was alerted and the issuance of a hearing aid.

- Inmates seem not to be receiving receive regular or annual auxiliary aids/services assessment. Four individuals have not received an assessment since 2016: D[redacted] H[redacted] ([redacted]729), K[redacted] C[redacted] ([redacted]285) (signs to communicate), J[redacted] C[redacted] ([redacted]848) (signs to communicate), A[redacted] R[redacted] ([redacted]483). Two individuals have not received an assessment since 2017: M[redacted] D[redacted] ([redacted]290) and R[redacted] R[redacted] ([redacted]756).

- K[redacted] C[redacted] [redacted]285), a deaf inmate, filed a grievance on 5/22/18 reporting that on several different occasions, she had been paged. Because she is deaf, she did not hear the page and had to rely on other inmates notifying her. In response, the Unit Administrator Sarah Moore sent out a memo on 5/29/18 instructing staff to notify K[redacted] C[redacted] or J[redacted] C[redacted] in person of any pages.

- KCIW has had substantial difficulty using the VRI in all appropriate circumstances.

J[redacted] C[redacted] ([redacted]848) filed multiple grievances about the availability of the VRI:
  - 6/7/18 – reported that the VRI is difficult to get because there is only one and because staff don't know what she is talking about when she requests it
  - 6/7/18 – reported that after another inmate cut her, she requested the VRI over and over, and it was not retrieved until after she had been cuffed and taken to medical and continued to request it. Even in medical, it was not brought promptly. The result was that she was unable to explain what had happened, either to custody or medical staff.
  - Response: rejected the idea of keeping it in the unit, but agreed it needed to be obtained promptly, and to provide training during in-service.

  More generally, I have discussed this issue repeatedly with KCIW's ADA coordinator, and it seems that staff intentions are good, but execution has been very challenging.

- A[redacted] R[redacted] ([redacted]483) reported that when her hearing device was available, she was paged to come get it. However, she did not hear the page and, as a result, did not receive the device for weeks.

- Handbook does not provide info about ADA coordinator, accommodations, etc.

Observed positive practices

- No deaf or hard-of-hearing individuals were missing from KCIW's 2018-10 Report.
- Hearing aids are provided on-site.
- In-person interpretation provided for education.

KSP (Reporting still incomplete)

Observed compliance issues

- All of the KSP inmates whose hearing impairment presented to KyDOC within the reporting period—5 individuals—had to wait longer than sixty days to receive a hearing aid or to be deemed ineligible. This includes: R[redacted] A[redacted] ([redacted]980) (alerted approximately 8/1/18, still ongoing as of 3/15/19); D[redacted] C[redacted] ([redacted]509) (180 days); D[redacted] H[redacted] ([redacted]499) (79 days); T[redacted] P[redacted] ([redacted]242) (alerted 6/13/18, still ongoing as of 3/15/19); J[redacted] P[redacted] ([redacted]236) (131 days). KSP's self-reporting failed to acknowledge any of these.

- I have not received documentation that 2 individuals are not eligible to receive a hearing aid. This includes: R[redacted] D[redacted] ([redacted]468) and R[redacted] H[redacted] ([redacted]648).

- When asked for documentation of ineligibility for a hearing aid, KSP initially provided medical records that did not contain the audiogram results requested.

- When asked for documentation of ineligibility for a hearing aid for some individuals, KSP first informed me that the inmates had moved to different institutions, which does not obviate the need for documentation of determinations made prior to transfer.

- This institution did not initially provide adequate information about the result of each individual's participation in programming or a work assignment. It took numerous individual follow-up messages and explanations to receive this information.

- The VRI laptop is not working. This needs urgently to be solved.

- The KyDOC ADA Coordinators webpage does not have up-to-date information for KSP.

- Provision of auxiliary aids/services assessments is inadequate:
  - L[redacted] E[redacted] ([redacted]749) has not received an assessment.
  - F[redacted] F[redacted]'s ([redacted]518) last assessment was years ago.
  - Three individuals' last assessment was in 2017: J[redacted] C[redacted] ([redacted]850), J[redacted] T[redacted] ([redacted]207), S[redacted] H[redacted] ([redacted]444).

- M[redacted] K[redacted] ([redacted]021) filed a grievance on 4/5/18 reporting that staff continues to turn off captions/subtitles for institutional channel 40 on the television. Staff response was a reminder. Institutional channel 40 is intended to *always* have captioning on, so individual reminders should not be necessary.

- TTYs are not available during the same hours as phones; arrangements have not been made to routinize access.

Observed positive practices

- When inmates who don't need captioning complained that captions blocked their view of movies, KSP instituted a new institutional channel to be captioned at all times. This was an excellent solution, if the implementation glitches described above can be solved.
- The availability of a Sorenson videophone has protected KSP from the frequent outages experienced by other institutions.

KSR

Observed compliance issues

- About half of the 101 individuals whose hearing impairment presented to KyDOC from the beginning of the 2018-10 reporting period (Apr. 1, 2018) through the end of 2018 had to wait longer than sixty days to receive a hearing aid or to be deemed ineligible. (We have data going beyond the 2018-10 Report for KSR because KSR provides regular audiology updates.) KSR had what their ADA coordinator described as a "huge backlog" caused by transportation issues. That backlog is not yet entirely solved. Inmates experiencing delays include:
  J[redacted] A[redacted] ([redacted]334) (113 days)
  L[redacted] A[redacted] ([redacted]265) (97 days)
  A[redacted] B[redacted] ([redacted]693) (92 days)
  J[redacted] B[redacted] ([redacted]781) (alerted 11/13/18, still ongoing as of 4/15/2019; behavior

prevents testing)
E[redacted] B[redacted] ([redacted]740) (63 days)
T[redacted] B[redacted] ([redacted]164) (97 days)
W[redacted] C[redacted]r ([redacted]519) (148 days)
T[redacted] C[redacted] ([redacted]414) (96 days)
J[redacted] C[redacted] ([redacted]943) (150 days)
C[redacted] C[redacted] ([redacted]616) (127 days)
B[redacted] D[redacted] ([redacted]943) (91 days)
B[redacted] D[redacted] ([redacted]507) (112 days)
D[redacted] F[redacted] ([redacted]576) (129 days)
L[redacted] G[redacted] ([redacted]138) (126 days)
D[redacted] H[redacted] ([redacted]796) (62 days)
B[redacted] H[redacted] ([redacted]083) (alerted 7/9/18, still ongoing as of 4/15/2019; other health conditions prevent resolution)
Ja[redacted] H[redacted] ([redacted]889) (117 days)
D[redacted] J[redacted] ([redacted]651) (73 days)
K[redacted] J[redacted] ([redacted]232) (alerted 11/7/18, still ongoing as of 4/15/2019)
F[redacted] J[redacted] ([redacted]313) (135 days)
C[redacted] K[redacted] ([redacted]505) (91 days)
D[redacted] L[redacted] ([redacted]400) (87 days)
D[redacted] L[redacted] ([redacted]628) (79 days)
R[redacted] L[redacted] ([redacted]918) (106 days)
C[redacted] M[redacted] ([redacted]249) (181 days)
J[redacted] M[redacted] ([redacted]717) (155 days)
C[redacted] M[redacted] ([redacted]250) (76 days)
R[redacted] M[redacted] [redacted]032) (141 days)
R[redacted] N[redacted] ([redacted]824) (alerted 9/16/18, still ongoing as of 4/15/2019; other health conditions prevent resolution)
J[redacted] O[redacted] [redacted]911) (92 days)
D[redacted] R[redacted] ([redacted]258) (84 days)
G[redacted] R[redacted] ([redacted]005) (98 days)
S[redacted] R[redacted] ([redacted]420) (102 days)
L[redacted] R[redacted] ([redacted]524) (129 days)
M[redacted] R[redacted] [redacted]406) (100 days)
R[redacted] R[redacted] ([redacted]297) (106 days)
C[redacted] R[redacted] ([redacted]747) (119 days)
J[redacted] S[redacted] ([redacted]919) (147 days)
H[redacted] S[redacted] ([redacted]924) (116 days)
C[redacted] S[redacted] ([redacted]007) (124 days)
R[redacted] S[redacted] ([redacted]068) (86 days)
D[redacted] T[redacted] ([redacted]732) (70 days)
A[redacted] T[redacted] ([redacted]394) (102 days)
V[redacted] T[redacted] ([redacted]347) (176 days, ultimately paroled prior to resolution)
J[redacted] T[redacted] ([redacted]967) (63 days)
F[redacted] W[redacted] ([redacted]697) (295 days; KSR reports inmate was uncooperative)
J[redacted] W[redacted] ([redacted]309) (63 days)

M[redacted] W[redacted] ([redacted]583) (148 days)

- One of KSR's medical providers was conducting audioscope screening at 40 dB instead of 25 dB. As a result, some inmates were improperly taken out of the audiology process.

- KSR offers some inmates pagers. But it denies this auxiliary aid to any inmate with less than 75 or 80 dB loss in one ear. For example, C[redacted] P[redacted] ([redacted]176) (65 dB in right ear, 75 dB in left ear) requested a pager because he could not hear PA announcements (Grievance #18-0793) and was denied. The document offered in support of this policy is (a) out of date (it was replaced by the audiology memo), and (b) doesn't mention pagers. In addition, the response to Mr. P[redacted] states that the cutoff is 70 dB. But—unlike KSR's bed-shaker threshold (50 dB), which was set based on consultation with an audiologist—there is no evidence that the pager cutoff is evidence-based. Two things are necessary for such a cutoff: someone needs to measure the volume of the announcements that the pagers substitute for, and an audiologist should be consulted. After reading this report in draft, KSR reported that this policy will be reevaluated.

- Other inmates, including D[redacted] V[redacted] ([redacted]842) (Grievance #18-0983), have reported that they cannot hear PA announcements. This was solved for him with a commitment to make personal notifications.

- Even though the ADA coordinator approved R[redacted] W[redacted] [redacted]498) for the TTY and has issued him a card saying he can use the TTY, Mr. W[redacted] reports that other staff still will not let him use it. KSR reports this issue has been resolved.

- There was a disciplinary incident involving J[redacted] M[redacted] ([redacted]566) dated 3/27/2018: he shoved a table into Dr. Amos, who was his health care provider. The table was the one that the VRI was resting on, during their encounter. For that reason, prison staff decided to proceed without the VRI at the hearing (The documentation stated: "NOTE: The VRI wasn't used during this Adjustment Hearing due to the nature of the disciplinary that the VRI was used to allegedly assault staff. and Inmate M[redacted] waived the VRI for this Hearing. Inmate used pen a paper to communicate and read his disciplinary also had a copy prior to Hearing.") It's unclear to me whether M[redacted] truly waived use of the VRI, or whether it was not offered to him. If the latter, that was inappropriate: if staff were concerned about safety, they could have used restraints, and placed Mr. M[redacted] far enough from the VRI that there was no safety risk.

- Disciplinary report against R[redacted] H[redacted] ([redacted]622), dated 5/8/2018 states "Inmate H[redacted] is deaf and does not sign[.] all questions to him were submitted in writing I find him guilty of the cat 3-11 based on the fact that he admitted to being in a fight with Inmate T[redacted]." But—as has come up in this case repeatedly[30]—Mr. H[redacted] *does* sign, and is functionally illiterate. An interpreter must be used for effective communication

[30] *See* Second Semi-Annual Report (Nov. 13, 2016), ECF 84-1, Pg.ID #1578; Site Visit Report, Kentucky State Reformatory (April 21, 2016), Second Semi-Annual Report, Appendix II, ECF 84-2, Pg.ID #1612-13.

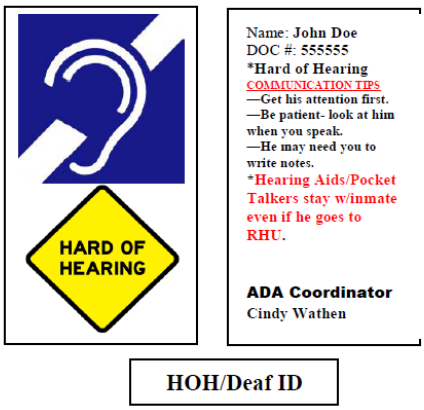
with him. If a VRI interpreter cannot understand his somewhat unorthodox sign language, then an in-person interpreter should be used.

- KSR's TTY instructions are generic and don't really explain how to get the device, set it up, etc.

- W[redacted] D[redacted]r ([redacted]856) filed a grievance explaining that with just one hearing aid, he was experiencing vertigo and also was worried about cars behind him. He had requested a second hearing aid, but health care staff told him that the policy allows just one; they referred him to the ADA coordinator. But in fact, the policy allows two where there is sufficient need. Thus the appropriate determination had not been made. I asked the ADA coordinator to explain this to health care staff and let me know what happened; she agreed. KSR staff report that they are awaiting a response from the KyDOC's regional medical director, Dr. Frederick Kemen.

Observed positive practices

- Generally, KSR efficiently tracks the audiology progress of a large number of individuals.
- KSR provides auxiliary aids/services assessments to a large number of deaf and hard-of-hearing inmates.
- Apparently, hearing aids are provided on-site.
- KSR successfully facilitates in-person interpretation for O[redacted] A[redacted] ([redacted]676) for AA and NA meetings
- Great training on KOMS, VRI Laptop; step-by-step instructions inside the VRI laptop.
- Aircard for laptop.
- Very good notice on ADA for inmate handbook.
- Use of pagers.
- Really excellent HOH/Deaf ID:



HOH/Deaf ID

- Excellent customization of staff training to include KSR-specific resources, address recent issues and solutions.
- Special training for "New ADA Features in KOMS"
- Training on VRI
- VRI Log shows that it is actually being used.

LAC

Observed compliance issues

- LAC is way behind the other KyDOC institutions with respect to ADA/Settlement Agreement compliance. It has no policies, no training, no forms, no working system for managing audiology or communications needs. It has no videophone and no VRI laptop (although this has not yet actually affected anyone, because it has no prisoners who sign to communicate).

- When asked for documentation of ineligibility for a hearing aid, LAC initially provided medical records that did not contain the audiogram results requested.

- LAC has experienced problems tracking audiology progress and ensuring that a proper and timely determination is made for each individual.

- LAC has no procedure to ensure individuals receive an auxiliary aids/services assessment.

- There was no hearing screening during a routine physical, though (after intervention based on self-report, this has reportedly now been fixed)

- This institution did not initially provide adequate information about the result of each individual's participation in programming or a work assignment. It took numerous individual follow-up messages and explanations to receive this information.

- LAC's ADA Coordinator has not completed settlement-related training.

- Settlement summary, settlement, and brochure are not in the inmate law library.

- Videophone not yet installed; VRI laptop not yet available.

- LAC is apparently not using any of the various forms previously recommended.

LLCC

Observed compliance issues

- Twelve of the 37 LLCC inmates whose hearing impairment presented to KyDOC within the 2018-10 reporting period (Apr. 1 – Oct. 1) had to wait longer than sixty days to receive a hearing aid or to be deemed ineligible. (The self-report was that there were 4 such delays.) This includes:
  J[redacted] L[redacted] ([redacted]912) (89 days, ultimately discharged prior to resolution)
  P[redacted] M[redacted] ([redacted]384) (123 days)
  C[redacted] M[redacted] ([redacted]866) (122 days)

R P (080) (185 days)
T R (246) (91 days)
E S (424) (125 days)
H T (929) (183 days, ultimately refused)
D T (130) (204 days)
R V (784) (noticed 4/27/18, received an incorrect eligibility determination at LLCC, finally received a hearing aid on 2/15/19 at KSR after 294 total days)
M V (878) (alerted 5/3/18, still ongoing as of 2/18/19)
T W (147) (196 days)
R W (638) (107 days).

- I have not received documentation that D T (130) is not eligible for a hearing aid.

- Three individuals, D S (103), D Y (160), and R V (784), were incorrectly determined to be ineligible for a hearing aid at LLCC.

- When asked for documentation of ineligibility for a hearing aid, LLCC initially provided medical records that did not contain the audiogram results requested.

- The preferred method of communication listed for two individuals in LLCC's 2018-10 Report was "can hear with hearing aid," even though they were not yet issued hearing aids.

- LLCC significantly overreported deaf/HOH inmates—including inmates who apparently have no hearing impairment.

- LLCC did not initially provide adequate information about the result of each individual's participation in programming or a work assignment. It took numerous individual follow-up messages and explanations to receive this information. After three emailed explanations to LLCC, I still did not receive the information and gave up to get the court report filed.

- LLCC has no method or plan to track whether deaf or hard-of-hearing inmates are witnesses in disciplinary hearings.

- LLCC does not provide hearing screenings when individuals arrive at the institution.

- When hearing aids belonging to P M (242) were sent out to be fixed, they were not returned in a timely manner (Grievances #18-761, #18-771).

Observed positive practices

- Hearing aids are provided on-site.
- Provision of shake-n-wake watches.

LSCC

Observed compliance issues

- As described above, it has been extremely challenging to obtain information from LSCC.

- Most of the 29 LSCC inmates whose hearing impairment presented to KyDOC within the 2018-10 reporting period (Apr. 1 – Oct. 1) had to wait longer than sixty days to receive a hearing aid or to be deemed ineligible.:

  L[redacted] B[redacted] ([redacted]299) (239 days)
  F[redacted] C[redacted] ([redacted]440) (256 days)
  T[redacted] C[redacted] ([redacted]371) (133 days)
  D[redacted] F[redacted] ([redacted]634) (alerted 7/2/18, still ongoing)
  R[redacted] G[redacted] ([redacted]190) (228 days)
  B[redacted] H[redacted] ([redacted]190) (alerted 8/7/18, still ongoing)
  D[redacted] H[redacted] ([redacted]789) (274 days)
  J[redacted] H[redacted] ([redacted]435) (alerted 7/24/18, was still ongoing when transferred to LLCC)
  J[redacted] M[redacted] ([redacted]453) (305 days)
  J[redacted] M[redacted] ([redacted]423) (124 days)
  T[redacted] M[redacted] ([redacted]826) (153 days, then discharged from KyDOC custody)
  M[redacted] M[redacted] ([redacted]789) (183 days, then discharged from KyDOC custody)
  J[redacted] O[redacted] ([redacted]981) (alerted 5/29/18, still ongoing)
  O[redacted] R[redacted] (183[redacted]) (alerted7/24/18, still ongoing)
  C[redacted] S[redacted] ([redacted]877) (196 days)
  L[redacted] T[redacted] ([redacted]860) (7/13/18, still ongoing)
  G[redacted] U[redacted] ([redacted]143) (306 days)
  R[redacted] W[redacted] ([redacted]569) (198 days)
  R[redacted] W[redacted] ([redacted]024) (alerted 6/21/18, still ongoing).

- D[redacted] P[redacted] ([redacted]748) waited 756 days to receive a hearing aid, from December 2016 until January 2019.

- There is a particular problem with individuals whose screening questionnaire indicates hearing issues not getting appropriate services after a transfer. LSCC seems to use an additional one-question screen (have you experienced hearing issues) and/or to wait for such inmates to request services via sick-call, which is inappropriate, and apparently not explained to the inmates. Affected inmates include:
  - D[redacted] F[redacted] ([redacted]634) (screened at RCC; no evaluation provided after transfer to LSCC)
  - J[redacted] H[redacted] ([redacted]435) (screened at EKCC; no evaluation provided at LSCC—he's since been transferred to LLCC)
  - J[redacted] O[redacted] ([redacted]981) (screened at RCC; no evaluation provided after transfer to LSCC)
  - L[redacted] T[redacted] ([redacted]860) (no evaluation provided after screening)

  - R[redacted] W[redacted] ([redacted]024) (screened at RCC; received medical care for ear infection causing hearing difficulty but no additional evaluation/treatment after transfer to LSCC)

- Only after many many requests was I finally given documentation of ineligibility for hearing aids for appropriate inmates.

- When L[redacted] M[redacted] ([redacted]925) was transferred to LSCC, his hearing aid was lost. Mr. M[redacted] reported that it took several requests to get LSCC to take steps to replace the hearing aid.

- Four individuals at LSCC did not have auxiliary aids/services assessments completed: J[redacted] H[redacted] ([redacted]435), F[redacted] S[redacted] ([redacted]473), P[redacted] W[redacted] [redacted]052), and J[redacted] W[redacted] ([redacted]201). Mr. S[redacted]'s assessment has now been completed; the other three are no longer housed at LSCC.

- LSCC did not initially provide adequate information about the result of each individual's participation in programming or a work assignment. It took numerous individual follow-up messages and explanations to receive this information.

- At LSCC, a hard-of-hearing individual, D[redacted] P[redacted] ([redacted]748), was written up for not standing for count; he was told that he was responsible for standing up even if he could not hear the alert, and was found guilty of the misconduct. Note: That finding was promptly and appropriately dismissed on supervisory review.

- TTY instructions are generic and therefore inadequate.

- Wrong sick-call slip: doesn't include request for auxiliary aid/interpretation.

Observed positive practices

- In response to a grievance (18-603) about not hearing announcements, agreed on 7/13/2018 to create an inmate job for someone who would make announcements, wing-to-wing (not cell-to-cell). This might work, but I have not been given any additional information.

NTC

Observed compliance issues

- Six of the 10 individuals whose hearing impairment presented to KyDOC within the 2018-10 reporting period (Apr. 1 – Oct. 1) had to wait longer than sixty days to receive a hearing aid or to be deemed ineligible. This includes: T[redacted] A[redacted] ([redacted]625) (alerted 6/13/18 because hearing aid broke, still ongoing as of 11/5/18); R[redacted] C[redacted] ([redacted]842) (80 days); F[redacted] H[redacted] ([redacted]831) (338 days); P[redacted] H[redacted] ([redacted]732) (73 days); U[redacted] P[redacted] ([redacted]028) (195 days); C[redacted] S[redacted] [redacted]210) (185 days).

- When I reviewed an audiogram, I discovered that NTC had incorrectly deemed H H ([redacted]445) ineligible for a hearing aid. I passed this along to KyDOC; Dr. Keman reviewed the documentation and agreed that a hearing aid was appropriate under the policy. One has been ordered. The resulting delay was significant: his audiogram was done on May 9, 2018; it was months before the error was discovered and corrected.

- I have not received documentation for D S ([redacted]693) demonstrating that he is ineligible to receive a hearing aid.

- NTC does not do hearing screenings for its arriving inmates.

- NTC did not initially provide adequate information about the result of each individual's participation in programming or a work assignment. It took numerous individual follow-up messages and explanations to receive this information.

- G E ([redacted]447) was unable to hear announcements, such as those for count or chow. NTC offered him only the option of purchasing a vibrating watch. I informed NTC that it is the prison's obligation to communicate effectively with him. Therefore, if the method for communicating effectively is a watch, the prison needs to supply one to Mr. E without a fee. The prison agreed.

- TTY instructions are generic and therefore inadequate.

Observed positive practices

- NTC effectively transitioned from one ADA Coordinator to another.
- Hearing aids are provided on-site.

RCC

Observed compliance issues

- Four of the 17 individuals whose hearing impairment presented to KyDOC within the 2018-10 reporting period (Apr. 1 – Oct. 1) had to wait longer than sixty days to receive a hearing aid or to be deemed ineligible. This includes: J B ([redacted]020) (69 days); D D ([redacted]194) (185 days); J M ([redacted]718) (alerted 8/24/18; later transferred to RCC and then discharged); E N ([redacted]599) (63 days).

- Only after M B [redacted]039) filed a grievance (#18-870) was he appropriately assessed for a hearing aid, and given one.

Observed positive practices

RRC has one of the very hardest jobs of KyDOC prisons—as the intake facility, it is where most inmates begin their prison term, and therefore need full screening. After some difficulties at the beginning of the Settlement Agreement implementation term, RRC is now managing the audiology processes efficiently.

- RCC provided complete information in the 2018-10 Report.
- Hearing aids are provided on-site. RCC does this efficiently.
- RRC informs inmates that earphones are available for parole hearings.
- Moved TTY to unit where an inmate uses it.

WKCC/Ross

Observed compliance issues

- In 2017 and early 2018, WKCC improperly issued some hard-of-hearing individuals pocket talkers without determining whether or not they were eligible for a hearing aid. I had raised this issue during a site visit, it was not solved until after I sought additional information in response to this most recent self-report, at which point WKCC agreed to retest the affected inmates who were still at the institution.

- R[redacted] C[redacted] ([redacted]000) was originally screened at the wrong threshold. Later, the ADA Coordinator caught the mistake and ordered its correction. She is one of the individuals who had earlier been given a pocket talker, rather than fully evaluated for a hearing aid; after several months, at a routine physical, she reported that the pocket talker was not effective for her. So she's been waiting for appropriate audiology services for over a year.

- At WKCC, there was a period where the videophone was inoperative. This is reflected in R[redacted] B[redacted]'s grievance #8698. While efforts to solve the problem began immediately, this outage, like others at other institutions, persisted for several weeks.

Observed positive practices

- WKCC/Ross has established a pattern of regularly sending biweekly audiology reports.
- Only 2 of the 22 individuals whose hearing impairment presented to KyDOC within the 2018-10 reporting period (Apr. 1 – Oct. 1) had to wait longer than sixty days to receive a hearing aid or to be deemed ineligible, and both were within two weeks of the 60 day target: A[redacted] B[redacted] ([redacted]404) (73 days); J[redacted] C[redacted] ([redacted]326) (68 days).
- Hearing aids are provided on-site. WKCC does this efficiently.
- TTY instructions are complete and specific.
- VRI is actually being used.

V. CONCLUSION

The Kentucky Department of Corrections continues to progress towards compliance with the Settlement Agreement, but implementation challenges remain. My next step is to ask each institution to conduct a self-audit by mid-June 2019, and follow up with several site-visits.

Dated: April 23, 2019

Respectfully submitted,

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Sixth Semi-Annual Report by the Settlement Monitor
April 23, 2019
Appendices

Appendix A: October 2018 Self-Reporting Questionnaire

Appendix B: Memo from me to KyDOC headquarters, setting out all information missing from October 2018 self-reports as of January 25, 2018

Appendix C: Compiled recommendations