

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

RASHAD JADE GORDON,
Plaintiff

v.

**THE STATE OF TEXAS, HARRIS COUNTY, CITY OF HOUSTON, JUDGE JIM
WALLACE, in his official Capacity, and MAGISTRATE CAROL CARRIER, in her official
capacity,**
Defendants

**CIVIL ACTION NO. H-98-0394
JURY TRIAL DEMANDED**

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This agreement arose out of Rashad Gordon's (Plaintiff) claims relating to violations of § 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 et seq. (Section 504), Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. 12131 et seq. (ADA) and the Texas Human Resources Code § 121.0001 et seq. (Chapter 121), as set out in *Gordon v. State of Texas, et al.*, Civil Action No. H-98-0394 in the Southern District of Texas. Harris County is one of the Defendants in that cause of action. There is disagreement and controversy concerning the damage and liability allegations raised in that lawsuit. However, to avoid the expenses and uncertainties of a trial, Harris County and Rashad Gordon "the parties" agree as follows:

1. In consideration of:

- a) the full payment of \$45,000 (including costs and attorneys fees) paid to Rashad Gordon and his attorneys Advocacy, Incorporated and the NAD Law Center, and
- b) Harris County's commitment to and agreement to enforce the policies, and arrangements set out below, Rashad Gordon agrees to dismiss with prejudice all claims against Harris County made in *Gordon v. State of Texas, et al.*, Civil Action No. H-98-0394 in the Southern District of Texas, including any complaints that Rashad Gordon could have raised in that suit.

2. In consideration of the Plaintiffs dismissal with prejudice of all claims against Harris County in Civil Action No. H-98-0394, and this agreement, Harris County agrees to enforce the policies and arrangements set out herein affecting its criminal justice institutions and departments.

3. All terms and phrases used in this Settlement Agreement and Release of Claims shall be interpreted consistently with the definitions in Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. 12131-12165; the United States Department of Justice regulations implementing Title II of the ADA, 28 C.F.R. Part 35; Section 504 of the Rehabilitation Act, 29 U.S.C. 794, et seq.; the United States Department of Justice regulations implementing Section 504 with respect to programs and activities receiving federal financial assistance, 28 C.F.R. Part, 42; Texas Human Resources Code 121.001, et seq.; the Texas Code of Criminal Procedure (when applicable); and the Texas Civil Practice and Remedies Code (when applicable). The parties have set out some of the definitions in the attached glossary.

4. The parties to this settlement recognize the importance of taking the appropriate steps to ensure that persons who are deaf and/or hard of hearing (hereinafter collectively referred to as “deaf”) can communicate effectively within the criminal justice system. This includes recognition of the importance of providing auxiliary aids and services and reasonable accommodations/modifications for persons who are deaf, following notice and request, when necessary for effective communication.

5. The parties intend by this agreement to facilitate the provision of an effective opportunity for persons who are deaf to effectively communicate and participate in Harris County’s criminal justice programs, activities and services as provided by federal and state law, including but not limited to Title II of the ADA, Section 504 of the Rehabilitation Act, Chapter 121 of the Texas Human Resources Code, the Texas Code of Criminal Procedure and the Texas Civil Practice and Remedies Code.

6. Harris County denies that it has ever been in violation of the ADA, Section 504 or Chapter 121 of the Texas Human Resources Code. Harris County contends that it has followed the policies and agreements set out herein at all times pertinent to: (a) Plaintiff’s underlying claims and (b) this settlement agreement. The use of the future tense in this agreement is not meant to imply or concede that Harris County has not followed the particular policies in the past.

POLICIES OR AGREEMENTS

1. Harris County agrees to provide auxiliary aids and services without charge, including sign language interpreters, following notice and request, when necessary to ensure effective communications with persons who are deaf in the criminal justice system.

2. Harris County shall post notices that auxiliary aids and services are available. These notices shall be posted in readily visible locations near public entrances and processing areas in the Harris County jails, in its courthouse building, and in its pretrial services office. Harris County will also post notices of the ADA grievance procedure in readily visible locations in the jails, in its courthouse building, and in its pretrial services office. The foregoing notices will have been posted by the ninetieth (90th) day after the effective date of this Settlement Agreement and Release of Claims.

3. Whenever Harris County acquires information that a person is deaf, it will inquire whether auxiliary aids and services are necessary to ensure effective communication and equivalent access to Harris County programs, services and activities. It will also inform the individual that auxiliary aids and services are available without charge.

4. When auxiliary aids and services are necessary to ensure effective communication, the auxiliary aid or service will be provided within a reasonable period of time following request, unless their provision constitutes an undue burden or is otherwise excused by law. Harris County shall use best efforts to provide auxiliary aids and services to a detainee who is deaf within two hours of such request.

5. If a person who is deaf requests a sign language interpreter at or before he/she is brought to the Harris County jail, initial jail processing of the detainee who is deaf will proceed with a sign language interpreter, unless exceptional circumstances preclude providing a sign language interpreter. Exceptional circumstances include but are not limited to: (a) the unavailability of all qualified sign language interpreters in the area; (b) any situation which would reasonably pose a direct threat to the health or safety of persons in the jail; or (c) weather conditions that substantially prevent travel to the jail. The parties intend that classification interviews, medical screening, pre-trial interviews, and 24-hour hearings involving detainees who are deaf and communicate through sign language be

conducted with a sign language interpreter, following notice and request, when necessary for effective communication.

6. The County recognizes that persons who are deaf and who communicate using sign language cannot communicate when they are handcuffed. If the removal of the handcuffs does not result in a direct threat to the health or safety of any person in the jail, or cause an undue burden or fundamental alteration of the custodial activity, the County will remove the handcuffs of a booked and classified detainee who is deaf to allow communication. The individual's custody level will be considered in making this determination. This does not prohibit a County officer from removing the handcuffs of a detainee who is deaf prior to booking and classification.

7. The County will make TDD/TTYs available to inmates in the Harris County jails so that equivalent phone services are available to inmates who are deaf. Upon notice of the need for repair, the County will arrange for prompt repair of TDD/TTYs. The County will provide alternate TDD/TTY services during repair periods. TDD/TTY access shall be provided to an inmate who is deaf prior to his/her release from jail so that he/she may make suitable arrangements to travel away from the jail.

8. When necessary to ensure effective communication and equivalent access to existing programs, activities and services, Harris County will provide the auxiliary aids and services without charge when requested by detainees who are deaf.

9. Once the inmates indicates that he/she is deaf, Harris County will ask an inmate charged with internal disciplinary violations, or who requests medical care, whether auxiliary aids and services are needed to ensure effective communication for disciplinary proceedings/medical treatment.

10. Harris County will provide a videotaped, sign language version of its Inmate Handbook to incarcerated inmates who are deaf within a reasonable period of time. The County shall use its best efforts to play the tape for the inmate who is deaf within 72 hours after the inmates' initial processing.

11. Unless rejection of auxiliary aids and service would give rise to a legitimate penalogical concern as determined by jail personnel, an inmate who is deaf may reject any auxiliary aid or service made available for the deaf in a jail program, service, or activity.

12. In situations where there is an expectation of privacy under the law, Harris County will require all sign language interpreters used by Harris County to maintain confidentiality.

13. The floor sergeant (or his/her designee) on any Harris County jail floor on which an inmate who is deaf is housed shall be notified of the presence of the inmate who is deaf, and shall have responsibility for the inmate's safe evacuation during an emergency.

14. Within ninety (90) days of the effective date of this agreement, Harris County Sheriff's Department shall establish uniform procedures to screen and admit sign language interpreters accompanying attorneys on inmate visits, and educators providing legally required special education to deaf inmates. The parties understand that an interpreter or educator may not be admitted into the jail for security reasons.

15. Inmates of the Harris County jail who are deaf shall have equivalent access to all programs, services and activities in the jail for which they are eligible unless their participation poses a direct threat to the health or safety of any person at the jail or is otherwise excused by law. Programs,

services, and activities present include but are not limited to: work programs, treatment programs, rehabilitation programs such as Alcoholics Anonymous, and educational classes.

16. Harris County shall only deny permission to use and/or remove hearing aid batteries and/or assistive listening devices from inmates who are deaf for legitimate penalogical reasons as determined by jail personnel.

17. If Pretrial Services becomes aware that an inmate is deaf, and uses American Sign Language, English Sign Language, it will record and transmit that information in a manner accessible to the Courts to facilitate the Court's provision of sign language interpreter services.

18. The County shall provide auxiliary aids and services and reasonable accommodations/modifications without charge following notice and request, when necessary for effective communication, to permit an inmate who is deaf to participate in jail programs, services, or activities without charge. Fees for programs, services and activities assessed against other inmates will be assessed against inmates who are deaf.

19. Harris County represents that it has a current contract with a sign language interpreter service, a copy of which has been provided to attorneys for Rashad Gordon.

20. Notice has been provided to Harris County employees of their obligations to accommodate and provide auxiliary aids and services to persons with disabilities. Harris County will notify: (i) the sheriff; (ii) county court administrator; (iii) district court administrator, and (iv) the head of Pretrial Services of this Agreement. Additionally, appropriate training as to the County's obligation to accommodate and provide auxiliary aids and services to the disabled will be made available annually to Harris County's employees.

21. If Harris County maintains disability liaisons for its departments, it shall provide a list of the names, phone numbers and addresses of the disability liaisons to Plaintiff's counsel within thirty (30) days of the effective date of this Agreement. [deletion]

22. Retaliation for exercising rights under the ADA or the Rehabilitation Act is prohibited by federal law, and Harris County will not retaliate against persons who exercise such rights.

23. The signatories agree that they will attempt to resolve any alleged violations informally, and agree to report any violations of this Agreement that come to their attention to the Harris County ADA Coordinator or the Coordinator's designee. They also agree to allow the ADA Coordinator a reasonable time to resolve any alleged violations of this Agreement.

24. Following receipt of full payment of \$45,000.00 to Rashad Jade Gordon and his attorneys Advocacy, Incorporated and the NAD Law Center, the Plaintiff will dismiss his claims against Harris County both in the lawsuit referred to herein and his complaint to the Department of Justice. [Deletion]

25. If an inmate who is deaf is denied an auxiliary aid/services, or excluded from any program, service or activity at the jail for penalogical reasons, jail personnel may confer with the ADA Coordinator of Harris County to determine whether a reasonable accommodation/modification can resolve the penalogical concern.

26. This agreement may be modified at any time by a written and signed document executed by mutual agreement by the Plaintiff and Harris County.

27. The effective date of this Agreement is the date of the last signature on the Agreement.

28. The signatories hereto agree that they will dismiss or make no further claims for attorney's fees or costs for services rendered in C.A. H-98-0394 or for legal services contributing to the agreements listed herein prior to the effective date of this agreement.

Robert Eckels for Harris County [signature] August 24, 1999

Barbara Baruch, Assistant County Attorney [signature] August 9, 1999

Rashad Jade Gordon, Plaintiff [signature] August 7, 1999

Elaine B. Roberts, Advocacy, Incorporated [signature] August 7, 1999

Marc P. Charmatz, NAD Law Center [signature] August 9, 1999

GLOSSARY OF DEFINITIONS

The Parties further agree to the following definitions:

Auxiliary aids and services: The term "auxiliary aids and services" includes:

(1) Qualified interpreters, notetakers, 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, telecommunications devices for deaf persons (TDD's), videotext displays, or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(2) Acquisition or modification of equipment or devices; and

(3) Other similar services and actions.

TDD and/or TTY: The term "telecommunications for the deaf" (TDD) referred herein as a TTY is a device designed to provide visual communication over the telephone lines consisting of a standard computer keyboard and an acoustic coupler.

Qualified Sign Language Interpreter: The term "qualified sign language interpreter" or "interpreter" means an interpreter who is able to interpret competently, accurately, and impartially both receptively and expressively, using any necessary specialized vocabulary.