

COPY

PRISON LAW OFFICE
DONALD SPECTER, #83925
SARA NORMAN, #189536
General Delivery
San Quentin, CA 94964
Telephone: (415) 457-9144

McCUTCHEN DOYLE BROWN
& ENERSEN
WARREN E. GEORGE, #53588
JENNIFER A. JONAK, #191323
Three Embarcadero Center
San Francisco, CA 94111-4066
Telephone: (415) 393-2000

**ORIGINAL
FILED**

FEB 11 2002

DISABILITY RIGHTS EDUCATION
AND DEFENSE FUND, INC.
ARLENE MAYERSON, #79310
2212 6th Street
Berkeley, CA 94710
Telephone: (510) 644-2555

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

ROSEN, BIEN & ASARO
MICHAEL W. BIEN, #96891
WILLIAM FERNHOLZ, #168278
155 Montgomery St., 8th Floor
San Francisco, CA 94104
Telephone: (415) 433-6830

PILLSBURY, MADISON & SUTRO LLP
SHAWN A. HANSON, #109321
CAROLINE MITCHELL, #143124
50 Fremont Street
San Francisco, CA 94105
Telephone: (415) 983-1000

LAW OFFICES OF ELAINE B.
FEINGOLD
ELAINE B. FEINGOLD, #99226
1524 Scenic Ave.
Berkeley, CA 94708
Telephone: (510) 848-8125

RECEIVED

FEB - 6 2002

Attorneys for Plaintiffs

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RECEIVED

JUN 28 2002

ROSEN BIEN & ASARO

JOHN ARMSTRONG, et al.,

Plaintiffs,

v.

GRAY DAVIS, et al.,

Defendants.

No. C-94-2307-CW

**STIPULATION AND ORDER ON
REVISED INJUNCTION**

Pursuant to the Court's Order of January 29, 2002, the parties have met and conferred regarding a revision of the Permanent Injunction issued in this case in order to meet the requirements stated by the Ninth Circuit in *Armstrong v. Davis*, 275 F.3d 849 (9th Cir. 2001).

1 The parties stipulate that the attached Revised Permanent Injunction meets the Ninth
2 Circuit's requirements.

3
4 IT IS SO STIPULATED.

5 Dated: February 5, 2002


SARA NORMAN
Attorney for plaintiffs

8
9 Dated: February 6, 2002


FRANCES GRUNDER
Attorney for defendants

10
11
12 IT IS SO ORDERED.

13 Dated: _____

14
15
16 CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

1
2
3 IN THE UNITED STATES DISTRICT COURT
4
5 FOR THE NORTHERN DISTRICT OF CALIFORNIA

6 JOHN ARMSTRONG, et al.,
7
8 Plaintiffs,

9 v.

10 GRAY DAVIS, et al.,
11
12 Defendants.

No. C 94-02307 CW

REVISED
PERMANENT
INJUNCTION

13 Based on the Findings of Fact and Conclusions of Law filed
14 herewith, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

15 Defendants Gray Davis, as Governor of the State of California,
16 Robert Presley, as Secretary to the California Youth and Adult
17 Corrections Agency, James Nielsen, as Chairman of the California
18 Board of Prison Terms (BPT), and the BPT, and their agents,
19 employees, successors in office and all persons acting in their aid
20 or in participation with them are advised, enjoined and ordered as
21 follows:

22 A. Introduction

23 1. Terms not expressly defined in this injunction shall have
24 the meaning given to them by Title II of the Americans with
25 Disabilities Act (ADA), 42 U.S.C. § 12131 et seq., and its
26 implementing regulations, or if no meaning is provided therein, the
27 meaning given to them by Section 504 of the Rehabilitation Act of
28 1973 (Section 504), 29 U.S.C. § 794, and its implementing

1 regulations. Where no definition is provided by the ADA, Section
2 504 or their implementing regulations, terms shall be construed in
3 accordance with ordinary principles of law, and particularly with
4 reference to the record in this case.

5 2. "Prisoners and parolees with disabilities" refers to all
6 current and future California State prisoners and parolees with
7 mobility, hearing or sight impairments, or with developmental or
8 learning disabilities, that substantially limit a major life
9 activity.

10 3. "Parole proceedings" shall mean all hearings conducted by
11 the BPT to determine whether and/or when a prisoner or parolee
12 should be released on parole or involuntarily confined, including
13 parole revocation and revocation extension hearings, life prisoner
14 hearings (documentation hearings, progress hearings, parole
15 consideration hearings, parole date rescission hearings and parole
16 board rules hearings), mentally disordered offender hearings and
17 sexually violent predator hearings. Parole proceedings also
18 include any events related to the hearings that occur prior to or
19 after the hearings, including, but not limited to, screening
20 offers, psychological evaluations, central file reviews and
21 administrative appeals.

22 B. Self-Evaluation and Transition Plan

23 4. Within ninety days of the date of this injunction, the
24 BPT shall evaluate, pursuant to 28 C.F.R. § 35.105, all of the
25 facilities in which parole proceedings are conducted to determine
26 whether each facility complies with the ADA and its implementing
27 regulations. The analysis shall not be limited to facilities owned
28

1 and operated by the BPT, but shall include all facilities in which
2 parole proceedings are conducted. The evaluation shall include:

3 a. An accessibility survey of all parole facilities for
4 which a complete accessibility survey has not been conducted. The
5 accessibility survey need not duplicate the surveys of other
6 governmental entities as long as the BPT takes reasonable steps to
7 ensure that such surveys are accurate and reliable.

8 b. An analysis of the accessibility of each parole
9 facility.

10 5. Immediately following its analysis of these facilities,
11 the BPT shall provide to all relevant BPT and California Department
12 of Corrections (CDC) personnel a list of the facilities that are
13 not fully accessible. The list shall describe those parts of the
14 facility that are not accessible and the disabilities that the
15 facility cannot accommodate. Updated lists shall be distributed as
16 changes occur.

17 6. The BPT shall thereafter draft a Transition Plan pursuant
18 to 28 C.F.R. § 35.150(d). The Transition Plan must include the
19 following:

20 a. For each facility in which parole proceedings are
21 conducted, a description of any structural modifications that will
22 be completed to make the parole proceedings conducted at that
23 facility accessible or another accessible location in which the
24 proceedings will be held.

25 b. A schedule for providing accessible proceedings for
26 prisoners and parolees with disabilities at each facility, or at
27 another, accessible location, as expeditiously as possible, but no
28

1 later than sixty days after the Transition Plan is submitted.
2 These provisions require only that the BPT request that the CDC
3 transport mobility impaired prisoners to accessible locations if
4 the facilities at which they are housed are inadequate. The CDC
5 may, for valid security or other penological reasons, decline to do
6 so.

7 7. Parole revocation hearings shall be conducted at a
8 location within fifty miles of the alleged violation that is
9 readily accessible to and usable by parolees with disabilities.

10 8. Postponement of a parole proceeding due to the
11 inaccessibility of a facility is not an acceptable alternative,
12 except in extraordinary circumstances.

13 9. Within 150 days of the date of this injunction,
14 Defendants shall submit their Transition Plan to Plaintiffs'
15 counsel. Plaintiffs shall thereafter have thirty days to submit
16 written comments and the parties shall negotiate in good faith to
17 resolve any disagreements. If any disputes remain, Plaintiffs
18 shall file a regularly noticed motion regarding the disputed issues
19 within 210 days of the date of this injunction.

20 C. Policies and Procedures.

21 10. The BPT shall develop and implement sufficiently specific
22 policies and procedures that will ensure continuous compliance with
23 all of the requirements of this injunction. Among other things,
24 the policies and procedures will ensure that prisoners and parolees
25 with disabilities are able to participate, to the best of their
26 abilities, in any parole proceedings.

27 11. The policies shall include detailed procedures for
28

1 identifying prisoners and parolees with disabilities prior to or at
2 the initiation of any parole proceeding.

3 12. The policies shall include detailed procedures for
4 accommodating and effectively communicating with prisoners and
5 parolees with disabilities at all parole proceedings.

6 13. A draft of the policies and procedures required by the
7 preceding paragraph shall be submitted to Plaintiffs' Counsel
8 within sixty days of the date of this injunction. Plaintiffs shall
9 thereafter have thirty days to submit written comments on the
10 policies and procedures, and the parties shall negotiate in good
11 faith to resolve any differences. If any disputes remain,
12 Plaintiffs shall file a regularly noticed motion regarding the
13 disputed issues within 150 days of the date of this injunction.
14 The briefing of any such motion shall be consolidated with the
15 briefing of any motions filed pursuant to paragraphs 21 and 23.

16 D. Training

17 14. Within 120 days of the date of this injunction, all BPT
18 Commissioners, BPT Deputy Commissioners, BPT executive officers,
19 BPT ADA coordinators, BPT appeals analysts, CDC District Hearing
20 Agents, CDC correctional counselors and other BPT and CDC personnel
21 who have direct or supervisory responsibility for communicating
22 with or making decisions affecting prisoners and parolees in
23 connection with parole proceedings shall receive adequate training
24 in the general requirements of Title II of the ADA, disability
25 awareness, the appropriate method of determining whether a prisoner
26 with a disability adequately understands written and verbal
27 communications, the circumstances that gave rise to this

1 injunction, its requirements and the BPT's policies and procedures
2 developed pursuant to this injunction that are relevant to the
3 individual's responsibilities.

4 The BPT shall provide training for all persons under its
5 jurisdiction to the extent set forth in this paragraph; it shall
6 also offer training to CDC staff involved in the parole and
7 revocation process; should any CDC personnel decline such training,
8 the BPT shall use its own personnel in their stead, except when the
9 CDC requires that CDC employees perform the services involved.

10 E. Identification and Accommodation

11 15. The BPT shall create and maintain a system for tracking
12 prisoners and parolees that the BPT identifies as having
13 disabilities. However, to the extent that tracking is conducted by
14 the CDC, it is not necessary for the BPT to duplicate that system,
15 and the BPT may make use of the CDC's tracking system as a
16 permissible means of complying with the injunction.

17 16. Prior to meeting with a prisoner or parolee about a
18 screening offer, and prior to parole revocation, parole revocation
19 extension, life prisoner parole date rescission, life prisoner
20 parole consideration, serious offender, mentally disordered
21 prisoner or sexually violent predator probable cause hearings, the
22 BPT shall take reasonable steps to identify prisoners and parolees
23 with disabilities. Such steps shall include, but not be limited
24 to:

25 a. Checking the system described in paragraph 15 to
26 determine whether the BPT has previously identified the prisoner or
27 parolee as having a disability.

1 b. Reviewing all relevant and reasonably available
2 information in the prisoner or parolee's central and medical files.

3 c. Verifying the disability when the BPT disputes the
4 extent or existence of the disability. The prisoner or parolee
5 shall be expected to cooperate with all verification efforts, but
6 the BPT shall be responsible for verifying the disability.

7 17. The BPT shall provide accommodations to prisoners and
8 parolees with disabilities at all parole proceedings. The prisoner
9 or parolee's request for a particular type of accommodation shall
10 be given primary consideration and shall be granted unless the
11 request is unreasonable for specific, articulated reasons allowable
12 under the ADA, or unless other effective accommodations are
13 available.

14 18. The BPT shall hire at least one full-time ADA coordinator
15 with expertise in Title II of the ADA, the identification of people
16 with disabilities and the needs of people with disabilities, and
17 shall ensure that this person is generally available during normal
18 business hours to answer questions from and provide advice to
19 District Hearing Agents and other BPT and CDC personnel. This
20 person shall not be given duties that are not related to ADA
21 compliance. If the BPT determines that employing a full-time ADA
22 coordinator is unnecessary, it may seek relief from the Court by
23 way of a regularly noticed motion, but in no event shall it file
24 such a motion until the newly hired ADA coordinator has been
25 employed for at least one year. The BPT shall bear the burden of
26 demonstrating that other staffing methods are sufficient to ensure
27 compliance with this injunction.

28

1 F. Forms

2 19. All BPT forms used by prisoners and parolees shall be
3 revised so that they are written in simple English. Whenever
4 prisoners or parolees with disabilities are given BPT forms that
5 they cannot understand due to their disabilities, they shall be
6 provided an accommodation to enable them to understand the forms to
7 the best of their abilities.

8 20. All BPT forms provided to prisoners and parolees shall be
9 readily available in alternative formats, including, but not
10 limited to, large print, Braille and audio tape.

11 21. All revisions to forms required by this injunction shall
12 be submitted to Plaintiffs' counsel within sixty days of the date
13 of this injunction. Plaintiffs shall thereafter have thirty days
14 to submit written comments and the parties shall negotiate in good
15 faith to resolve any disagreements. If any disputes remain,
16 Plaintiffs shall file a regularly noticed motion regarding the
17 disputed issues within 150 days of the date of this injunction.
18 The briefing of any such motion shall be consolidated with the
19 briefing of any motions filed pursuant to paragraphs 13 and 23.

20 G. Equipment

21 22. The BPT shall ensure that appropriate equipment is
22 available to prisoners and parolees who need such equipment to
23 communicate effectively at parole proceedings. Such equipment
24 shall include, but not be limited to, assistive listening devices,
25 computer readers and magnification devices.

26 23. The BPT shall provide Plaintiffs' counsel with a list of
27 the available equipment and the places it is available within sixty
28

1 days of the date of this injunction. Plaintiffs shall have thirty
2 days to submit written comments and the parties shall negotiate in
3 good faith to resolve any disagreements. If any disputes remain,
4 Plaintiffs shall file a regularly noticed motion regarding the
5 disputed issues within 150 days of the date of this injunction.
6 The briefing of any such motion shall be consolidated with the
7 briefing of any motions filed pursuant to paragraphs 13 and 21.

8 H. Screening Process

9 24. The screening offer, and all relevant BPT forms, police
10 reports and other written documents, shall be effectively
11 communicated to prisoners or parolees with disabilities at least
12 seventy-two hours in advance of the time at which they must decide
13 whether to exercise any of their rights, including the right to
14 request an attorney, and to accept or reject the screening offer.

15 25. Prisoners and parolees with disabilities shall be
16 provided an accommodation at the screening process when that is
17 necessary to ensure that the prisoner or parolee understands to the
18 best of his or her ability all of his or her rights, the nature of
19 the charges and the consequences of waiving any rights. Before a
20 prisoner or parolee with a disability may waive a parole hearing or
21 the right to an attorney, the BPT must determine that the waiver is
22 knowing and intelligent.

23 26. When necessary to achieve effective communication,
24 appropriate auxiliary aids or assistance must be provided to
25 prisoners and parolees during the screening process. Such aids and
26 assistance shall include, but not be limited to, sign language
27 interpreters, assistive listening devices, readers and persons
28

1 trained to provide assistance to individuals with cognitive
2 disabilities.

3 27. At its discretion, the BPT may appoint attorneys as an
4 accommodation. In order to suffice as an accommodation, the
5 attorneys must be adequately trained to provide accommodations to
6 persons with disabilities and must receive adequate additional time
7 for providing those services. Attorneys appointed to represent
8 individuals with disabilities shall be informed of their clients'
9 disabilities. If the BPT is aware that a prisoner or parolee
10 requires certain specific accommodations, the BPT shall either
11 instruct an attorney appointed to represent that prisoner or
12 parolee to provide those specific accommodations, or shall provide
13 the prisoner or parolee with those specific accommodations by some
14 other means.

15 28. In lieu of providing assistance at the screening process,
16 the BPT may refer the prisoner or parolee for a hearing with the
17 necessary aids or assistance, provided that, absent any additional
18 charges, the hearing is within thirty days of the parole hold and
19 that any term of imprisonment imposed at a hearing does not exceed
20 a typical screening offer for a similar violation.

21 I. Hearings

22 29. At its hearings, the BPT shall make accommodations for
23 prisoners and parolees with disabilities and provide appropriate
24 auxiliary aids and services necessary for effective communication.
25 Such accommodations and auxiliary aids and services shall include,
26 but not be limited to, sign language interpreters, assistive
27 listening devices, readers and individuals trained to provide

28

1 assistance to persons with disabilities.

2 30. At its discretion, the BPT may appoint attorneys as an
3 accommodation. In order to suffice as an accommodation, the
4 attorneys must be adequately trained to provide accommodations to
5 persons with disabilities and must receive adequate additional time
6 for providing those services. Attorneys appointed to represent
7 individuals with disabilities shall be informed of their clients'
8 disabilities. If the BPT is aware that a prisoner or parolee
9 requires certain specific accommodations, the BPT shall either
10 instruct an attorney appointed to represent that prisoner or
11 parolee to provide those specific accommodations, or shall provide
12 the prisoner or parolee with those specific accommodations by some
13 other means.

14 31. Hearing impaired prisoners and parolees who need sign
15 language interpreters shall not have their hands and arms
16 restrained in any way during the hearing, unless a written
17 determination is made on an individualized basis that the prisoner
18 or parolee would pose a direct threat if unrestrained and that
19 there are no other reasonable alternatives available to protect
20 against the threat. The Chairman of the BPT or his delegate shall
21 personally approve the use of restraints in each such instance
22 prior to their use.

23 32. The BPT shall make accommodations for prisoners and
24 parolees with disabilities in order to assist them in preparing for
25 parole proceedings. For example, if a prisoner or parolee is
26 entitled to review his or her central file prior to a parole
27 proceeding, and if that prisoner or parolee is unable, due to a
28

1 disability, adequately to review his or her central file without an
2 accommodation, the BPT shall make such an accommodation. Where
3 other preparation, including but not limited to participating in
4 psychological interviews, obtaining letters of support and
5 developing parole plans, is necessary prior to a parole proceeding,
6 the BPT shall provide reasonable accommodations to prisoners or
7 parolees with disabilities who require such accommodations
8 adequately to complete such preparation.

9 J. Appeals

10 33. Prisoners and parolees with disabilities who cannot use
11 or understand the appeal process or prepare an appeal themselves by
12 reason of their disability shall be provided with effective
13 assistance in preparing a BPT appeal.

14 K. Grievances

15 34. The BPT shall develop and implement a grievance
16 procedure, separate from its current appeal procedure, for
17 processing any complaints of denials of requests for
18 accommodations. All grievances requesting reasonable
19 accommodations at a scheduled hearing shall be decided before the
20 hearing.

21 35. All administrative appeals alleging in substance
22 violations of the ADA or its implementing regulations shall be
23 treated as ADA grievances, and any successive appeal on the non-ADA
24 merits of a decision shall not be deemed barred due to the filing
25 of the ADA-related grievance or grievances. Except as otherwise
26 provided in the immediately preceding paragraph, all such ADA-
27 related appeals shall be decided within thirty days of the BPT's

1 receipt of the appeal form.

2 L. Programs

3 36. The BPT shall provide to all Commissioners and Deputy
4 Commissioners who participate in life prisoner parole consideration
5 hearings a list of CDC programs in which prisoners with
6 disabilities can meaningfully participate, either without
7 accommodation or with appropriate and readily available
8 accommodation. This list shall specify the types of programs
9 available, the particular disabilities the programs can accommodate
10 and the prisons in which they are offered. This list shall be
11 updated every six months.

12 37. At life prisoner parole consideration hearings, the BPT
13 shall not recommend that prisoners participate in programs that are
14 unavailable to them by reason of their disabilities and shall not
15 rely on the failure of prisoners to participate in programs not
16 available to them by reason of their disabilities as a factor
17 supporting denial of a parole date or a multi-year denial.

18 38. Nothing in this section shall require the BPT to release
19 a prisoner on parole who is otherwise unsuitable for release under
20 California law.

21 M. Monitoring

22 39. The parties shall attempt negotiate a plan to monitor
23 Defendants' compliance with this injunction. If such negotiations
24 are unsuccessful, the Court shall consider the appointment of a
25 Special Master. Within forty-five days of the date of this
26 injunction, the parties shall file a joint and mutually acceptable
27 plan for monitoring this injunction or separate briefs describing
28

1 each party's position on the need for a Special Master and the
2 Court's authority to appoint one.

3 N. Enforcement

4 40. The Court shall retain jurisdiction to enforce the terms
5 of this injunction.

6 41. No person who has notice of this injunction shall fail to
7 comply with it, nor shall any person subvert the injunction by any
8 sham, indirection or other artifice.

9
10 IT IS SO ORDERED.

11

12 Dated: FEB 11 2002

CLAUDIA WILKEN

13

CLAUDIA WILKEN
United States District Judge

14

15

16 Copies mailed to counsel
as noted on the following page

17

18

19

20

21

22

23

24

25

26

27

28