Third Semi-Annual Report by the Settlement Monitor (May 31, 2017)

Appendix IV

Site visit report for Dec. 2016 and Feb. 2017 visits, with exhibits (May 4, 2017)
Covered facilities:
Blackburn Correctional Complex (Dec. 12, 2016)
Eastern Kentucky Correctional Complex (Dec. 13, 2016)
Little Sandy Correctional Complex (Dec. 13, 2016)
Northpoint Training Center (Dec. 14, 2016)
Kentucky State Reformatory (Feb. 27, 2017)

Exhibits: A—Staff Interviewed
B—Consolidated Recommendations
C—How to Communicate Effectively with Hard-of-Hearing Inmates
D—Auxiliary Aids/devices currently in place or under test at KYDOC institutions

Site Visit Report of Settlement Monitor

Adams & Knights v. Commonwealth of Kentucky
Case No. 3:14-cv-00001-GFVT (E.D. Ky.)

Margo Schlanger, Settlement Monitor

December 2016 & February 2017 Site Visits

Blackburn Correctional Complex (December 12, 2016)
Eastern Kentucky Correctional Complex (December 13, 2016)
Little Sandy Correctional Complex (December 13, 2016)
Northpoint Training Center (December 14, 2016)
Kentucky State Reformatory (February 27, 2017)

May 4, 2017 (Draft circulated to parties for comment: April 19, 2017)

INTRODUCTION

The Settlement Agreement in this case addressing conditions for deaf and hard-of-hearing inmates in Kentucky became effective June 28, 2015, and allows me to visit each of the twelve Kentucky Department of Corrections (KYDOC) facilities each calendar year. I completed my first round of site visits in December 2016, with visits to Blackburn Correctional Complex (BCC), Eastern Kentucky Correctional Complex (EKCC), Little Sandy Correctional Complex (LSCC), and Northpoint Training Center (NTC). At this point, the only Kentucky prison I have not visited is Bell County Forestry Camp (BCFC), which has had only a very small (and shifting) number of deaf or hard-of-hearing inmates. I then began my second round of site visits at the Kentucky State Reformatory (KSR) in February 2017; I previously inspected KSR in February 2016.

For efficiency, this report covers all five recent visits. In this report, I will refer together to the relevant prison as "the five institutions." As with my previous site visit report, this report is intended to be helpful not just to a particular prison, but to all of KYDOC's facilities, as they continue to move towards compliance with the Agreement in this case.

The visits were each facilitated by the institutions' ADA Coordinators, who, like the other staff I spoke to, conducted themselves with professionalism throughout the tours. Prior to the visits, a law student working as my assistant conducted 41 phone interviews of KYDOC inmates, and I reviewed their interview notes and numerous other documents provided by each institution. During the visits, I was able to see every thing and every place I requested and to review all requested records, which were voluminous. I spoke freely and confidentially with inmates and custody and non-custody staff. Exhibit A lists the name and title of each staff member I spoke with, by institution. Between the pre-tour phone inmate interviews (many of which I followed up with in-person interviews), and in-person inmate interviews conducted during my visit, this report incorporates information learned from conversations with 53 inmates, out of the 112 inmates identified to me from those facilities as deaf or hard-of-hearing (several of whom had been transferred or been released). See Table A.

Table A: Deaf/Hard-of-Hearing Inmates

	All	Interviewed		
		All	In person	Pre-Visit Phone
Blackburn	5	5	4	5
EKCC	14	9	4	6
Little Sandy	6	5	3	3
Northpoint	20	11	6	7
KSR	67	23	5	20
TOTAL	111	53	24	41

At each institution, I talked via in-person sign language interpretation to each inmate who uses sign language to communicate, except for one inmate whom my assistant interviewed prior to the visit, who chose not to speak with me again. I also made sure to talk to other hard-of-hearing inmates in a variety of housing and programming situations. To ensure representativeness at NTC, where my assistant and I spoke to 11 of 20 inmates, and at KSR, where we spoke to 23 of 67 inmates, I used a formal random sample method, stratified across housing type, to pick whom to interview. To maximize confidentiality, I do not list the inmates we spoke to or use their names in this report.

On April 19, I provided this report in draft to the Warden and ADA Coordinator at each referenced institution; KYDOC Director of Operations Chris Kleymeyer and Safety Director Webb Strang; KYDOC counsel Angela Dunham; and plaintiffs' counsel, giving each two weeks for comments or corrections. No substantive comments were offered.

Each Warden welcomed the visits and my earlier oral feedback, which I shared at exit interviews at each institution. I found each of the visits extremely productive. KYDOC has made very significant progress towards compliance with the Settlement Agreement. Not all processes are yet working smoothly, but the situation for deaf and hard-of-hearing inmates continues to improve. Unlike in prior site visit reports, I have few additional recommendations based on these site visits. I have previously made 79 recommendations; I have just three to add:

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.

Recommendation 81: Medical staff should ensure that inmates with a need for audiology services are not charged inappropriately, and should avoid repeated charges for ongoing efforts to obtain hearing aids or other services.

Recommendation 82: Each VRI should be the subject of a log sheet that tracks its usage, including staff member, date and purpose. In any institution that houses one or more inmates who use sign language to communicate, the ADA Coordinator should check the VRI log sheet at least once each week, and should ensure that the VRI is being used on appropriate occasions, not just for classification and disciplinary meetings, but for other important conversations between the inmate and staff.

Rather than new situations that call out for new approaches, what I saw during my visits was a need for more thorough implementation of the Settlement Agreement and of my prior recommendations. Accordingly, this report identifies and describes the areas in which there seem to be ongoing problems, and explains what is needed, citing the Settlement Agreement provisions and relevant prior recommendations that cover that topic. For ease of reference, Exhibit B includes the prior recommendations and the three new ones.

I. IDENTIFICATION OF INMATES COVERED BY THE AGREEMENT

As I have emphasized in prior reports, the Settlement Agreement covers both deaf and hard-of-hearing inmates. The Agreement defines the phrase "Deaf Inmates" broadly, to mean:

> Inmates who are unable to hear well enough to rely on their hearing as a means of processing information, who rely on Auxiliary Aids and Services to Effectively Communicate and who qualify as individuals with disabilities under the ADA, including deaf, hard of hearing, or hearing impaired persons. *See* 42 U.S.C. § 12102(4). (Settlement Agreement I.3)

Because often the appropriate accommodation or auxiliary aids and services vary depending on an inmate's degree of hearing impairment, I will use the terms more specifically in this report. As in prior reports, I will refer to someone as hard-of-hearing if he or she is able—with or without amplification—to hear substantial spoken language. I will refer to someone as deaf if he or she has very little or no functional hearing.

Identification of deaf inmates is mostly easy; their disability is usually obvious, particularly if they are non-verbal. But identification of hard-of-hearing inmates can be more difficult. Some of the components of an identification system continue to be a challenge at the five facilities (and, I believe, for at least some others):

a) *Computer Alerts.* As soon as an inmate is identified as deaf or hard-of-hearing, an alert should be placed in both KOMS (Kentucky Offender Management System) and the Electronic Medical Record (EMR). The alert should be immediately apparent at the top of the record when the inmate's record is opened, without a special search. This is happening only at some facilities and only some of the time.[1] At the time of my last site visit to it, Roederer Correction Complex (RCC) had appropriate practices in place on this issue. Figures A and B illustrate:

[1] Settlement Agreement III.B requires: "If medical staff determines that an Inmate is Deaf, medical staff will note the disability in the Inmate's institutional file, and will promptly notify the appropriate ADA Coordinator." And

Figure A: RCC KOMS Alert

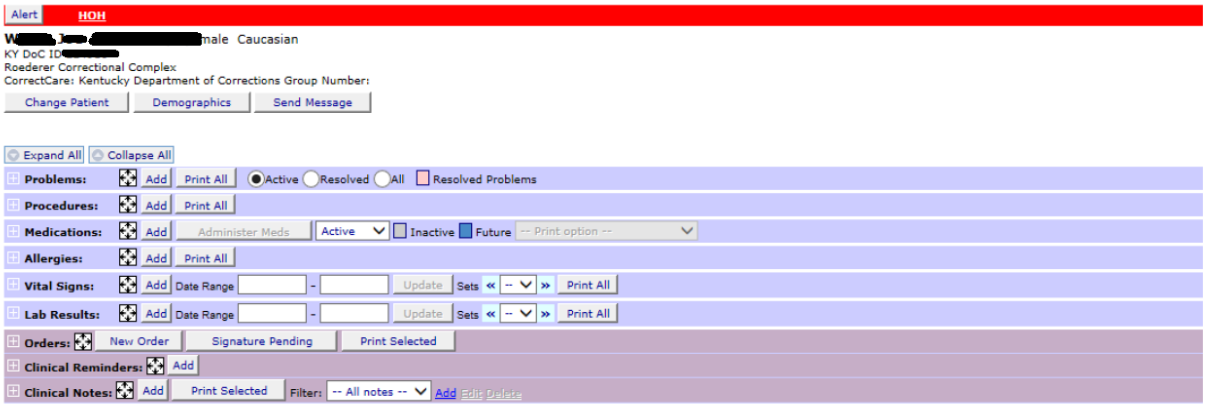
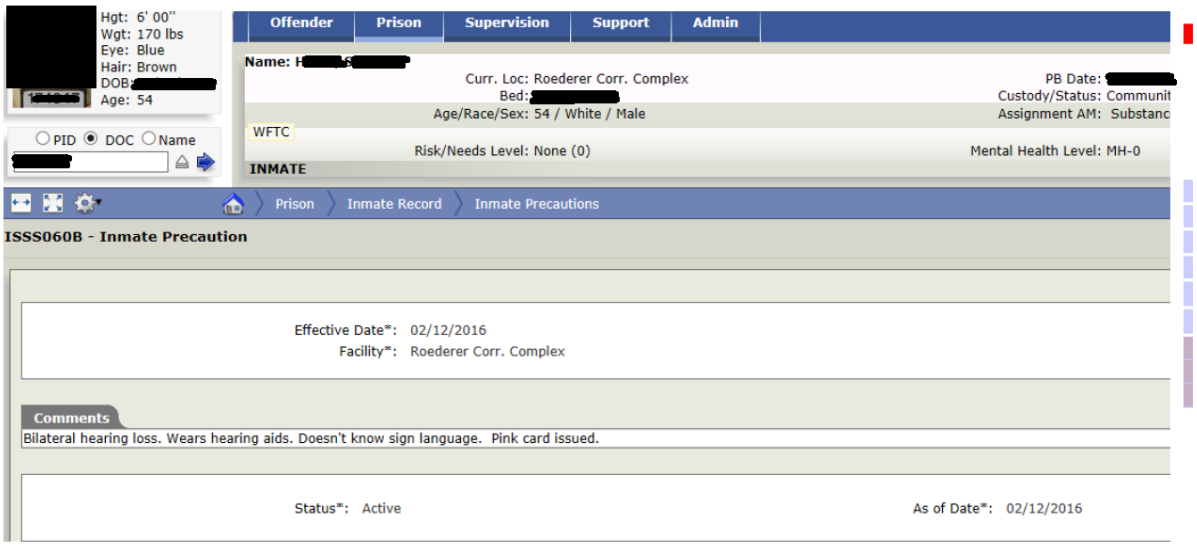


Figure B: RCC EMR Precautions



b) *Transfers.* When an inmate identified as deaf or hard-of-hearing at one institution is transferred to another, a robust system should ensure notification to the new institution's ADA Coordinator. It seems that the easiest way to arrange this is for the ADA Coordinator to receive the routine transfer memo that accompanies any group of transferees. Then the ADA Coordinator can check the KOMS system and see if any incoming inmate is deaf or hard-of-hearing and make appropriate arrangements. There is no such system currently in place, and some hard-of-hearing

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III.D.1 requires: "The KDOC will take appropriate steps to ensure that all KDOC personnel having regular contact with any Deaf Inmate are made aware of such Inmate's need for Auxiliary Aids and Services so that Effective Communication with, and the safety of, the Deaf Inmate will be ensured." See Recommendation 54(d) ("If an inmate fails the "whisper test" or other hearing evaluation . . . [t]wo different alerts should be placed in his record, one in KOMS (the Kentucky Offender Management System), to alert correctional staff to the issue whenever they retrieve his computerized file, and the other in the EMR (Electronic Medical Record), to do the same for medical staff. Both alerts should be immediately obvious when the electronic file is opened.").

inmates are not being appropriately accommodated or tracked after transfers. I recommend that a transfer tracking system be put in place:

> **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 require 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.**

c) *Prompt provision of id cards.* At each institution, inmates identified as deaf or hard-of-hearing receive a special id card.[2] (There is, however, some inconsistency in implementation of this practice.) When an inmate is transferred, that card should go with the inmate to the new institution, and then should be replaced promptly by the analogous card at the new institution. I heard some reports that instead, the card was thrown away at the new institution, and that new cards could take weeks or even months to be issued. This is not appropriate.[3]

d) *Intake screening.* In addition, some transferees *not* previously identified as hard-of-hearing may in fact be so. Some come from facilities in which hearing screenings are not performed—jail or halfway houses, for example. Others who transfer from another KYDOC prison never received a hearing screening because they entered that other prison prior to implementation of the Settlement Agreement. And the passage of time means that some may have hearing impairments that are new or worse than at the time of prior screening. The five institutions seem to be doing hearing screenings as previously recommended, and I have been working with KYDOC centrally to improve the screening instrument.[4]

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[2] Settlement III.D.1 ("Upon identifying an Inmate as Deaf during initial intake, assessment, and classification, the Deaf Inmate will receive a distinct identification (ID) card that clearly identifies him or her as a Deaf Inmate. The ID card will signify to the KDOC personnel that the Inmate is Deaf, may not respond to verbal commands, and may require Auxiliary Aids and Services.").

[3] Settlement III.D.1 ("If any KDOC staff takes any Deaf Inmate's ID card, the Deaf Inmate will be given another official indicator of his or her Deaf status."); Recommendation 56 ("Each facility should ensure that every deaf or hard-of-hearing inmate is able to carry such a card at all times. If an inmate misplaces the card, a replacement should be promptly provided.").

[4] Settlement Agreement III.B ("As part of the initial intake, assessment, and classification, medical staff will assess and, if necessary, test all persons who may be a Deaf Inmate for Deafness. If medical staff determines that an Inmate is Deaf, medical staff will note the disability in the Inmate's institutional file, and will promptly notify the appropriate ADA Coordinator. Any Deaf Inmate who was not assessed at the initial intake, assessment, and classification will be assessed at the annual classification."); Recommendation 54 ("Each facility should ask each inmate about any hearing difficulties during his or her initial medical screening, in their first day or two in the facility. Questions about hearing should be at the start of that screening, to allow accommodations, if needed, during the rest of the process. . . . All inmates should also fill out, in writing or orally, the multiple-question hearing screening. . . . This form should be administered by medical staff, to facilitate necessary medical followup.").

e) *Subsequent screening.* Finally, as I have previously recommended, routine physicals should include renewed hearing screenings.[5] Again, I have been working with KYDOC centrally to ensure implementation of this recommendation; it is not clear to me that implementation has yet begun.

II. PROVISION OF AUDIOLOGY SERVICES

The issue on which I spent the most time at each of the five institutions is prompt provision of audiology services. Medical care at all KYDOC institutions is provided by Correct Care Solutions (CCS). At each of the five institutions, medical staff have worked to facilitate inmate access to audiology services. Each institution sends inmates who fail the whisper test to an off-site audiologist (or, if indicated, an Ear, Nose & Throat doctor), for hearing testing, hearing aid evaluation, and hearing aid fitting. But at each institution, staff had at the time of the visit not yet succeeded in creating and managing a smooth and timely process. It was taking many months for some inmates to receive hearing aids, with delays coming from a variety of sources—transport issues, scheduling, billing, payment, loss of documents, and others. I have worked with both ADA Coordinators and medical staff to develop a tracking system for them to use to ensure that every deaf and hard-of-hearing inmate is appropriately and promptly assessed and provided with necessary audiology services,[6] and I have asked for frequent followups. That has helped: several facilities have now switched to a more responsive audiology provider and others solved various problems that were obstructing prompt care. Even so, more than a few inmates remain in process even now, months after the site visits.

More progress is needed. It is crucial for each institution to partner with an audiologist capable of timely service provision, to smooth its own scheduling and payment systems, to ensure that inmates are not mistakenly removed from the hearing-aid process, and to systematically track each inmate's progress towards receiving all necessary audiology services, checking not just every quarter or six months, but every week or two. As I have previously recommended, in the absence of special treatment needs or other circumstances, an appropriate amount of time for provision of a hearing aid is 60 days from when the inmate presents a hearing problem.[7] I requested tracking information in April's quarterly reporting form, and will continue to request updates every quarter. CCS is the medical provider, but the ADA Coordinator also has a key role in this area, to monitor and problem-solve.

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[5] Recommendation 55 ("In order to ensure appropriate identification of deaf and hard-of-hearing inmates, all inmates' annual or other routine physicals should include the hearing questionnaire (Exhibit B-2).").

[6] Settlement Agreement V.B requires that "All Auxiliary Aids and Services required by this Agreement, the U.S. Constitution, the ADA, Section 504 of the Rehabilitation Act, and Kentucky laws, along with any other applicable federal and state laws, which are deemed medically necessary, will be provided promptly upon request, free of charge, to Deaf Inmates subject to" appropriate co-payments. Auxiliary Aids and Services include hearing aids. Settlement Agreement I.2. See 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.").

[7] Id.

A related topic is medical copays for audiology services. I have heard from numerous inmates that when they have made repeated requests for audiology services, they have been charged not just one copay, but several. As I understand KYDOC policy, inmates with chronic conditions are not supposed to be charged repeated copays.[8] Repeat charges discourage access to care. And so I have a new recommendation:

Recommendation 81: Medical staff should ensure that inmates with a need for audiology services are not charged inappropriately, and should avoid repeated charges for ongoing efforts to obtain hearing aids or other services.

III. INMATE ORIENTATION

There continue to be gaps in effective communication to inmates as they arrive at a new institution. For many facilities, orientation videos (both about the institution itself and about the Prison Rape Elimination Act) are not captioned. They should be. More broadly, facilities are not universally taking appropriate steps to ensure that deaf and hard-of-hearing inmates are receiving effective communication of orientating information. Inmates who use sign language to communicate are not receiving their orientation with sign language interpretation; hard-of-hearing inmates are not always receiving appropriate accommodations (e.g., one-on-one or small group conversation, perhaps with assistive listening devices (see Part IV.B, below); presentations in quiet spaces). [9] Recommendation 80, above, should assist with this set of problems.

In addition, inmate orientation about the KYDOC's nondiscrimination obligations and the accommodations and services available for deaf and hard-of-hearing inmates is not yet sufficiently robust. Each institution's inmate handbook should include information about this,[10]

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[8] The Settlement Agreement provides that auxiliary aids, including hearing aids, may be subject to a copay, but requires that the copayment policy be the same as for non-hearing related issues. (Hearing aid batteries may not have a copay requirement and indigent inmates may not be charged.) See Settlement Agreement V.B.

[9] Settlement III.A.1 ("The KDOC will provide Deaf Inmates at initial intake, assessment, and classification with Effective Communication."); Settlement 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. These services, privileges, and programs will include, but not be limited to: orientation . . . ."); Recommendation 23 ("Provide captions for all orientation videos, for newly acquired entertainment and educational videos, and other videos when captioning is available."); Recommendation 71 ("In each facility's settings in which staff ordinarily talk to a group of inmates—orientation, education, etc.—consideration should be given to talking to any hard-of-hearing inmate one-on-one, instead.").

[10] Recommendation 76 states:

> Each facility should include notice in its Inmate Handbook of the facility's basic obligation to avoid discrimination and provide effective communication, and inform inmates to contact the ADA Coordinator if needed. Something like the following would be appropriate:
>
> *Americans with Disabilities Act and Deaf and Hard-of-Hearing Inmates*
>
> An inmate with a verified disability will have the opportunity to participate in services, privileges, and programs similar to other inmates at this institution. If you are deaf or hard-of-hearing, you should contact the designated institutional ADA Coordinator; each living unit and inmate public areas has contact

and the various forms and brochures previously recommended[11] should be provided to deaf and hard-of-hearing inmates and available in the inmate law library.

Finally, the ADA Coordinators have not yet developed a sufficient routine "auxiliary aids and services assessment" process.[12] As I have previously explained, the best way to assess the need for aids/services necessary for effective communication and to avoid discrimination is an individual meeting with each Deaf inmate. (This approach is similar to the "interactive process" required by the ADA under Title I, which deals with employment.) The idea of the meeting is for staff to understand the communications needs of the inmate. At the meeting, the ADA Coordinator or deputy ADA Coordinator can inform the inmate about available aids and the inmate can discuss his communication needs. The inmate's request is entitled, both under the Agreement and the operative regulation, to "primary consideration."[13]

These meetings for deaf and hard-of-hearing inmates appear to be happening in some institutions only when prompted by my impending site visit, rather than routinely on entry into the institution or at the annual classification review.[14] In addition, there continue to be gaps in needed services, which appropriate annual assessments would uncover. For example, I heard from several inmates about difficulty they faced in effective communication during educational or programming sessions. Some of the difficulties are easily solved, but had not previously come to light: for example, one inmate told me that he couldn't hear during one class because it was held too near laundry machines. The ADA Coordinator could easily arrange for that class to be held in a quieter space, if he or she knew of the need. The assessments should facilitate that knowledge and solution. In some facilities, these assessments are being done not by the ADA Coordinator but by a unit administrator. Unit administrators are less likely to know about

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information posted. All {name facility here}-provided services will provide effective communication and make available qualified interpreters when needed. Qualified Interpreters and Auxiliary Aids and Services are available for an inmate with a verified disability upon request. It is the inmate's responsibility to request an interpreter from volunteer organizations or individuals that are providing activities and services. An inmate who meets criteria to be accommodated under the ADA will be provided identification to facilitate effective communication. If at any time an inmate chooses to not wear the identification, he/she shall sign a waiver document to be placed in the institutional file.

[11] Settlement Agreement III.F.1 ("[T]he KDOC will provide each Deaf Inmate with materials providing information about the Auxiliary Aids and Services available to Deaf Inmates and instructions for how to obtain, request, or use those Auxiliary Aids and Services."); Settlement Agreement III.C.3, III.D, VI.C.3 (describing requirements relating to "Request for Auxiliary Aids and Services Form," "Request for Deaf Inmate ID Card form," medical request form); Recommendations 13, 46-47.

[12] Settlement Agreement III.C ("Auxiliary Aids and Services Assessment"). See Recommendation 45 ("For each Deaf inmate, the ADA Coordinator should conduct an individual services assessment meeting, at which the inmate's available methods of communication are expressly ascertained and recorded, and the inmate is informed about the available auxiliary aids and services. . . . The assessment should be updated annually, ideally at the inmate's annual classification meeting.").

[13] Settlement Agreement I.5 ("In determining what form of Auxiliary Aids and Services is necessary, primary consideration shall be given to the request of the Deaf Inmate for such Auxiliary Aids and Services (*see* 28 C.F.R. § 160(b)(2))." 28 C.F.R. § 160(b)(2) includes essentially the same language..

[14] Settlement Agreement III.B ("Any Deaf Inmate who was not assessed at the initial intake, assessment, and classification will be assessed at the annual classification review.").

available auxiliary aids and services and potential accommodations. Unless they are appropriately trained and informed about these matters, they cannot conduct an adequate auxiliary aid assessment.

IV. EFFECTIVE COMMUNICATION WITH HARD-OF-HEARING INMATES

A. *Staff training on communication with hard-of-hearing inmates*

I have previously made a large number of recommendations relating to staff training,[15] and am continuing to work with KYDOC headquarters staff on implementation of computer based training modules. In addition, I have recommended some on-site live training. These five site visits underscored the need for widespread training relating to two topics in particular: VRI use (see Part V.A, below) and talking to inmates who are hard of hearing. Exhibit C includes a tip sheet on the latter topic pulled from the previously recommended slides. It should be shared with all employees and contractors who talk with inmates, to assist them; it is designed to be saved and posted.

B. *Assistive listening systems and amplifiers*

As I have explained in prior reports, an assistive listening system captures sound close to its source via a microphone and transmits that sound directly to the earphones or hearing aids of people with assistive listening devices. Such systems can be extremely helpful to people who are hard-of-hearing, because they allow the listener to amplify the sound without distortion and without amplifying the ambient noise.

Several KYDOC facilities already use what is in effect an assistive listening system for their common-space televisions; they broadcast the institutionally available channels on a radio frequency, and then require inmates listening to the common televisions to use radio receivers, with earbuds, rather than playing the sound out loud. The purpose of this has been to keep the sound level down in common spaces—but there is a major benefit for hard-of-hearing inmates, who report that they can hear TVs that use that set up. Not every institution uses this approach, and even in facilities that do, some dorms are not set up with the necessary equipment. At the least, this is a good system to use in any dorm where hard-of-hearing inmates are housed.

But more broadly, there is a significant need for assistive listening in other communications venues. Several potential methods exist and are beginning to be tested at the various institutions. At Western Kentucky Correctional Complex (WKCC), the chaplain speaks into a microphone linked by way of a short-distance transmitter to FM radio; inmates can use their own radios to receive the signal. At LLCC, the chaplain uses an assistive listening system that was sold with several receivers and earbuds. Also at LLCC, education staff will soon test a portable induction loop system, which will link to the telecoil that is built in to most modern hearing aids; such a system can also be linked to earphones for hard-of-hearing inmates who

[15] Settlement XIII (setting out many requirements for staff training); IX.E.2 ("The KDOC will ensure that KDOC employees are adequately trained in the operation of the technology" for communication between deaf and hard-of-hearing inmates and people outside of prison); Recommendations 51, 52, 77.

don't have hearing aids. In addition, on my recommendation, KSR is testing a personal FM system, which allows a speaker who wears a microphone to be better heard by a listener who wears earphones. At a gathering of all KYDOC's ADA Coordinators, and in my most recent quarterly reporting form, I requested that each institution that tests one of these types of devices let me know the details; I can then share their experience with the other KYDOC institutions. The first such information-sharing document is attached to this Report as Exhibit D; it includes fuller descriptions of each of the above systems.

The point is that some such assistive listening systems are necessary for inmates who are hard-of-hearing, to enable their equal access to programming. More work is needed to develop solutions across KYDOC; each religious, educational, and rehabilitative programming area needs access to such systems.[16] Once systems are developed and available, hard-of-hearing inmates should be informed about them, too, so that they can request them when helpful.

Phones pose a particular problem for hard-of-hearing inmates. They are, of course, very hard-used in prisons, which can degrade sound quality. And sometimes they are located close to noisy areas like showers or dayrooms. Securus, KYDOC's current phone contractor, offers volume controls on phones, which are helpful—people with hearing impairments can turn the volume up. But many institutions don't have volume-adjusted phones in all the areas where they are needed by hard-of-hearing inmates.[17] In addition, the degree of amplification may be insufficient for some inmates. On my recommendation, Luther Luckett is currently testing a portable phone amplifier, described in Exhibit D. If that test works out, these devices would be useful for other institutions as well.

V. COMMUNICATION SERVICES FOR SIGN-LANGUAGE USERS

Two facilities covered by this report—EKCC and LSCC—were not at the time of my visit housing any inmates who use sign language to communicate, and therefore did not need interpretive services. Between them, the other three—BCC, NTC, and KSR—housed six inmates who communicate using sign language. The availability of sign language interpretation at those facilities has improved but is not yet sufficiently robust or routine.

A. *Video Relay Interpretation (VRI): Use and Procedures*

In each of the five institutions covered here, a VRI laptop was available during my visit and staff seemed to know that it existed. I tested each laptop and they all worked. This is a good

[16] 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"); Recommendation 67 ("Each religious, educational, and programming area should have available a device to allow wireless amplification for individual hard-of-hearing inmates.").

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

base on which to build. Some problems remain, however. Most important, it remains the case that VRI services are not being used in some situations when they should. The VRI laptops are being used in certain formal communication settings—classification and disciplinary hearings, for example. (Even in these situations, usage is inconsistent—at KSR, for at least one disciplinary hearing, staff communicated with an inmate by the inadequate method of pen and paper.) But even if VRIs were used for all such formal meetings, there are many other situations where effective communication is necessary but obstacles to VRI usage remain. These include medical appointments, investigation meetings to prepare for disciplinary hearings, meetings with grievance or other legal aides (inmates who assist other inmates with grievances or disciplinary hearings), and other conversations between staff and inmates who sign to communicate. Each institution needs to set up an easy process by which staff obtain and use the VRI laptop for interpretation of conversations with deaf inmates, without needing to cancel and reschedule meetings or the like. In order to make this work, staff must be trained that use of the VRI laptop is not a big deal or special, but is simply the most effective way for them to communicate with inmates who sign.[18]

It is particularly important that the VRI laptops be used routinely in segregated (or "restrictive") housing, because various features of segregation obstruct many of the coping mechanisms deaf inmates might use to understand what someone is telling them—the ambient noise is extreme, visual cues are scarce, etc. That means that staff need to plan in advance for such usage, figuring out for each restrictive housing area where an internet signal will be tapped and how to appropriately restrain an inmate who needs to use his hands to sign.

One obstacle to more prevalent use of the VRI laptop is that not all staff know how to operate it. In addition, the technical preparation to facilitate usage has not been done universally. Some school areas do not have internet access, for example. And the VRI laptops do not all have in their bags long computer cords, signal splitters (See Figure C), and instructions.[19]

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[18] The Settlement Agreement requires effective communication, including interpretation, in many different kinds of situations: VI.A, III.C (auxiliary aids and services assessment); VI.C.4 (emergency on-site medical); VI.H (transfer and classification); V.A.2 (grievance hearings); VII.A (disciplinary hearings and related meetings); VI.J ("for any significant communications between Deaf Inmates and KDOC staff that is not specifically discussed in this Agreement."). See especially Recommendation 10 ("For inmates who use sign language to communicate, no special request should be needed to obtain VRI services for auxiliary aid/service assessment, emergency health care on-site, classification and transfer hearings and related meetings, grievance meetings and hearings, disciplinary hearings and all related processes, parole meetings and hearings.").

[19] Settlement Agreement IX.E.1 ("The KDOC will ensure that all equipment under the KDOC's control that is used to accommodate Deaf Inmates is kept in good working order."); IX.E.2 ("The KDOC will ensure that KDOC employees are adequately trained in the operation of the technology."); Recommendation 64 ("Each facility should obtain and test a "splitter" for each VRI laptop, so that the laptop can be used alongside a computer.").

Figure C: Splitter

At this point, it seems clear that additional monitoring/implementation methods are necessary to ensure effective VRI use. The recommendation that follows meets this need:

> **Recommendation 82: Each VRI should be the subject of a log sheet that tracks its usage, including staff member, date and purpose. In any institution that houses one or more inmates who use sign language to communicate, the ADA Coordinator should check the VRI log sheet at least once each week, and should ensure that the VRI is being used on appropriate occasions, not just for classification and disciplinary meetings, but for other important conversations between the inmate and staff.**

B. *In-person interpretation*

At KSR, the ADA Coordinator has arranged for in-person interpretation for several repeat programming needs, for two different inmates. At BCC and NTC, however, it seems that staff have not ever arranged for an in-person interpreter. For a situation like orientation, where the need is known in advance, if VRI is not adequate, a professional in-person interpreter should be used.

C. *Interpretation for education and programming*

As I have discussed in prior reports, it may be that an in-person interpreter is necessary to provide effective communication and equal access to educational/programming services. Institutions can, however, try out VRI as an alternative. In order to do that, they will need to plan in advance for internet access in each applicable space, and, depending on the need, perhaps get a more suitable microphone, capable of picking up speech from the teacher and/or other inmates. What's clear is that somehow, interpretive services must be available. Institutions need to plan systematically how to meet this need for academic education, groups such as Alcoholics Anonymous, and evidence-based programs like Moral Reconation Therapy.

D. *Telephone Access in Restrictive Housing*

When an inmate who uses sign language to communicate is housed in a restrictive housing unit (RHU), he or she is entitled to the same degree of telecommunications access as

non-deaf inmates.[20] Even an inmate whose status or history requires that he or she be restrained is entitled to the same degree of telecommunications access as a non-deaf inmate with a similar status or history. Accordingly, each institution must plan in advance how it will meet the telecommunications needs of deaf inmates, including those who sign to communicate, who are placed in restrictive housing. For inmates who sign, the VRI laptops are capable of being used as videophones, with or without video relay service (VRS). That the phone setting works on each VRI laptop should be ascertained in advance, and any problems solved. RHU staff should be trained to offer access in the same circumstances they offer non-deaf inmates telephone access. If restraints are going to be needed, the necessary adapted restraint equipment should be readily available, so that the inmate's hands can be free for signing. It's likely rare, but some inmates may prefer to use a TTY rather than a videophone or VRS. This is, for example, true for a deaf inmate at NTC. Accordingly, staff should also figure out (again, in advance) how to enable TTY access for an RHU inmate.

VI. MISCELLANEOUS ISSUES

A. *Direct Threat determinations*

The Settlement Agreement requires that deaf and hard-of-hearing inmates receive "access to services, privileges, facilities, advantages, and accommodations substantially equivalent to those offered to similarly situated non-Deaf Inmates," but, consistent with the ADA, explains that the KYDOC "retains the discretion to determine that certain activities present a Direct Threat of injury or death to Deaf Inmates and therefore may not be able to provide such Deaf Inmates full and equal enjoyment of some of its services, privileges, facilities, advantages, and accommodations." (Settlement Agreement II.A. V.A.4 says the same thing). Similarly, the Agreement requires that deaf and hard-of-hearing inmates be provided "opportunities for institutional work assignments that are consistent with the opportunities for the same assignments given to similarly situated non-Deaf Inmates," but, again, gives KYDOC "the discretion to determine that certain work assignments present a Direct Threat of injury or death to a Deaf Inmate or others and may therefore choose not to provide the Deaf Inmate a substantially equal opportunity to those work assignments." (Settlement Agreement VI.F). Consistent with the Americans with Disabilities Act, the Settlement Agreement defines "Direct Threat" to mean "a significant risk to the health or safety of one or more Deaf Inmates or others that cannot be reduced or eliminated by reasonable accommodation. A finding of Direct Threat must be based on and supported by objective evidence." (Settlement Agreement I.4). Whenever a

[20] Settlement Agreement II.A ("The KDOC will ensure that Deaf Inmates have full and equal access to and enjoyment of all services, privileges, facilities, advantages, and accommodations available to similarly situated non-Deaf Inmates. The KDOC shall provide Deaf Inmates with access to services, privileges, facilities, advantages, and accommodations substantially equivalent to those offered to similarly situated non-Deaf Inmates."); IX.A ("The KDOC will provide Deaf Inmates with access to telecommunication devices that enable them to have communication with people outside of the KDOC and that are substantially equivalent—in terms of the amount and quality of the information conveyed—to the communications that non-Deaf Inmates have with people outside of the KDOC using traditional telecommunication devices such as telephones."). See Recommendation 40 ("Deaf inmates in segregated housing must be allowed access to telecommunications services equal to that of non-Deaf inmates in the same disciplinary or administrative status. The best solution would be to work out a method for such inmates—including those on "max assault status"—to use the videophone, with VRS when needed.").

Direct Threat is found, the Agreement requires prompt notification to me, as Settlement Monitor, that "explain[s] the reasoning in support of such determination." (Settlement Agreement II.A, V.A.4, VI.F).

My visits revealed that the staff who make decisions about job assignments had not all been trained on the Settlement Agreement's relevant provisions—either the substantive or the reporting obligations. At BTC, hard-of-hearing inmates explained to me that they had been barred from certain jobs, and produced prison documentation of those decisions. I had not received the required report, and when I inquired, it became clear that the decisionmaking process was not appropriately individuated. Some of the inmates had quite mild impairments and there was no need for any restriction for them, and some of the jobs didn't pose any risk even to inmates with a more significant degree of hearing impairment. In addition, the required report to me had not occurred. What the Settlement Agreement and the ADA require is individuated decisionmaking that considers the particular job and the particular inmate, with prompt reporting to me so I can offer technical assistance.[21]

B. *Empowering the ADA Coordinator*

At most of the five institutions, the ADA Coordinator (backed by the Warden and Deputy Wardens) has been able to obtain cooperation from staff whose conduct is governed by the Settlement Agreement. At LSCC, however, this has been less true. Instead, I have been told several times that LSCC's ADA Coordinator cannot compel compliance by staff who do not report to her. The particular problems have now been solved, but the exchanges reveal a broader issue—it is crucial that ADA Coordinators have a high enough rank or receive sufficient support from their Warden and Deputy Warden to accomplish their compliance role.

VII. CONCLUSION

Implementation of the Settlement Agreement continues to progress. I am attaching my prior recommendations, adding the three new recommendations from this report, as Exhibit B to this report. This list should assist KYDOC staff with their ongoing compliance efforts. In addition, I plan for my subsequent visits and reports to proceed using a compliance checklist, which I will soon share with KYDOC. Much progress has been made, and I have every expectation that full compliance will be achieved soon.

[21] See Recommendation 53 ("Ensure that all relevant staff know about the Agreement's reporting obligations, so that I am appropriately notified when any of the reporting-triggering events takes place. (Settlement Agreement II.A; VI.F; VIII.B.1; VIII.B.3; VIII.C; IX.C; XII).").

Site Visit Report of Settlement Monitor

Adams & Knights v. Commonwealth of Kentucky
Case No. 3:14-cv-00001-GFVT (E.D. Ky.)

Margo Schlanger, Settlement Monitor

December 2016 & February 2017 Site Visits

Blackburn Correctional Complex (December 12, 2016)
Eastern Kentucky Correctional Complex (December 13, 2016)
Little Sandy Correctional Complex (December 13, 2016)
Northpoint Training Center (December 14, 2016)
Kentucky State Reformatory (February 27, 2017)

May 4, 2017

Exhibits

Exhibit A: Staff interviewed during site visits
Exhibit B: Consolidated Recommendations
Exhibit C: How to Communicate Effectively with Hard-of-Hearing Inmates
Exhibit D: Auxiliary Aids/devices currently in place or under test at KYDOC institutions

Exhibit A: Staff interviewed during site visits

Staff interviews and meetings

Blackburn Correctional Complex (BCC), December 12, 2016
Thomas Bull, receiving and discharge officer
Deanna Byrd, classification and treatment officer (orientation)
Kim Cook-McDonald, Health Services Administrator
Howard Ellison, volunteer chaplain
Kristy Hicks, school administrator
Jason Lotter, adjustment officer
Joanna King, Director of Nursing
Abigail McIntire, Deputy Warden, Programs
Christy Peach, ADA Coordinator
Tiffany Ratliff, Warden
Belinda Sanchez, unit administrator
Tiffany Taylor, HR administrator

Eastern Kentucky Correctional Complex (EKCC), December 13, 2016
Robert Blanton, Health Services Administrator (HSA)
Jami Elam, unit administrator
Abe Felton, Correctional Lieutenant, restrictive housing
Jackie Kirby, classification treatment officer
Dr. Lester Lewis
Kathy Litteral, Warden
Jill Miller, Director of Nursing
Michael Prater, Correctional Lieutenant, Fire & Safety Officer, ADA Coordinator
John Vaught, Correctional Lieutenant, intake
Steven Ratliff, Education Director
Timothy Doubblestein, Chaplain

Little Sandy Correctional Complex (LSCC), December 13, 2016
Heather Bossio, classification and treatment officer
Lorie Conley, ADA Coordinator
David Cary, Chaplain
Kim Duvall, Health Services Administrator
David Garris, Sgt., restrictive housing unit
Paul Holbrook, Deputy Warden, Programs
Tyara Hughes, Nurse Practitioner
Danny McGraw, Deputy Warden
Joe Meko, Warden
Shawn Ramey, Sgt.
Shadow Skaggs, Director of Nursing
Christy Smith, educational instructor
Roy Whitt, Corrections recreation leader

Northpoint Training Center (NTC), December 14, 2016
Don Bottom, Warden
Stephanie Boyd, Recreation Director
Kelly Buckley, Administrative Assistant (medical department)
Heather Caldwell, Director of Nursing
Pam Coffman, ADA Coordinator
Stephany Hughes, Unit Administrator
Brandon Lynch, Back-up ADA Coordinator, Procedures Officer
Aaron Mobley, Chaplain
Daniel Napier, Restrictive Housing Unit, Unit Administrator
Jonathan Rooney, Orientation CTO
Stephanie Thompson, Health Services Administrator
Kristy Hicks, Corrections Regional Education Administrator
Shelli Conyers-Votaw, Nurse Practitioner
Christopher Young, Correctional Sergeant, Receiving and Discharge Supervisor

Kentucky State Reformatory (KSR), February 27, 2017
David Dillard, Chaplain
Anthony Hillebrandt, ADA Coordinator
Michael Jordan, Health Services Administrator
Warren McLemore, Social Service Clinician, Sex Offenders Treatment Program
Marla McMillan, GED teacher
Karl Seitz, Intake caseworker
Paul Sloan, Backup ADA Coordinator
Aaron Smith, Warden
Jim VanNort, Psychology program administrator
Courtney Welsh, Licensed psychology associate

Exhibit B: Consolidated Recommendations

Adams & Knights v. Commonwealth of Kentucky
Case No. 3:14-cv-00001-GFVT (E.D. Ky.)

Margo Schlanger, Settlement Monitor

CONSOLIDATED RECOMMENDATIONS

AS OF APRIL 19, 2017

I present, the recommendations I have made in three groups: First, those from April 2016; second, those from December 2016; third, those from April 2017. The numbering is continuous from one group to the next.

Group 1 (April 21, 2016)

Note: These are edited from their original wording; they are phrased more generally, in order eliminate the references to KSR.

I. IDENTIFICATION OF INMATES COVERED BY THE AGREEMENT

Recommendation 1: Each facility should identify all inmates who meet the Agreement's definition of "Deaf." This is necessary both in order to report names to me and to ensure that appropriate services are provided to hard-of-hearing inmates. (Settlement Agreement I.3; III.A; III.B; XV.B.1.d)

Recommendation 2: Include additional questions in the screening questionnaire, along the lines of:

- Do you currently have and use a hearing aid?
- Have you ever been diagnosed with hearing loss?
- Have you ever used a hearing aid that you no longer use? (If yes, Why don't you use it anymore?)

  A "yes" answer to any of the these three questions should be followed up by a provider visit, unless the inmate explains that he no longer uses the hearing aid because his hearing has improved so that it is no longer necessary.
- If you currently have a hearing aid, is it working ok?

  A "no" answer to this question should be followed up by a provider visit.
- Note to tester: If the inmate seems unable to understand these questions due to a hearing impairment, provider follow-up is indicated.

(Settlement Agreement I.3; III.A; III.B)

Recommendation 3: Staff administering the questionnaire should be alert to (and trained on) the possibility of low literacy, and should ask questions orally when appropriate. Among illiterate inmates, a hearing impairment sufficient to undermine their ability to answer these questions ought to itself trigger referral to the appropriate provider. (Settlement Agreement I.5; III.A; III.B)

Recommendation 4: Further assessment of the inmate should include not just the medical decision

whether to send the inmate to an audiologist, but a separate, explicit, charted and electronically-tracked decision whether he is deaf or hard-of-hearing. (Settlement Agreement III.B; III.D [identification cards]; III.C [auxiliary aids and services assessment]; XV.B [reporting])

Recommendation 5: The KDOC Electronic Medical Record system should include a single electronic code that flags inmates who are deaf, hard-of-hearing, or hearing-impaired (hereinafter Deaf, in this report), to facilitate provision of services to them. (Settlement Agreement III.B)

II. PROVISION OF AUDIOLOGY SERVICES

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.) One way to accomplish less expensive and more comprehensive assessment for any backlog might be to bring in an audiologist to each applicable facility for two or three days. (Settlement Agreement V.B; VIII.B.2)

III. AUXILIARY AIDS/SERVICES

A. *Personal hearing devices: Hearing aids and amplifiers*

Recommendation 7: Full information about hearing aids and hearing evaluations, including the availability of batteries without charge, should be provided to inmates. See Exhibit D-2. (III.F)

Recommendation 8: Inmates waiting for an audiologist evaluation or for hearing aid service should be offered an amplifier while they wait. (Settlement Agreement V.B)

B. *Qualified Interpretation*

Recommendation 9: For inmates who use sign language to communicate, some kind of qualified interpretive services should be readily available for any communication between an inmate and staff when the inmate requests interpretation. The availability of interpretation should not be limited to only certain types of encounters, communications, or settings. (Settlement Agreement III; VI)

Recommendation 10: For inmates who use sign language to communicate, no special request should be needed to obtain VRI services for auxiliary aid/service assessment, emergency health care on-site, classification and transfer hearings and related meetings, grievance meetings and hearings, disciplinary hearings and all related processes, parole meetings and hearings. (Settlement Agreement VI.A; III.C [auxiliary aids and services assessment]; VI.C.4 [emergency on-site medical]; VI.H [transfer and classification]; V.A.2 [grievance hearings]; VII.A [disciplinary hearings]; VI.A.3 [parole hearings])

Recommendation 11: Interpretation services should be offered without special request to any inmate (known to prison staff to use sign language to communicate) during initial classification and orientation. These encounters are vital to the terms of each inmate's living situation, and inmates are unlikely to know, during these early stages, that they need to request interpretation and how to do so. (Settlement Agreement III.A.1)

Recommendation 12: Both the existing VRI contract and the standing arrangement with a provider of in-person qualified interpretive services are crucial and should remain in place. 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 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. (Settlement Agreement VI.A; VI.E. VI.A.3)

Recommendation 13: More generally, more clarity and a better process for picking a qualified interpretation method—VRI or in-person—are needed. The various memos, forms, and training should be modified to support that process. The facility should give "primary consideration" to the affected inmate's view on this question. Revised versions of all the relevant forms and memos are attached as Exhibit D. The information in Exhibit D-5—in particular, the preferred communication method—should be made available to all KYDOC staff who need it, including both medical and custody staff, including electronically. (Settlement Agreement VI.A; I.5)

Recommendation 14: Each facility should track the effectiveness of communication via VRI in other situations, in order to decide whether there are any situations in which in-person interpretation should be the first recourse. As part of this assessment process, each time a VRI is used, the inmate should be asked how effective the resulting communication was. This can be done by a scaled question:

> Please check the box that best indicates your views.
>
> The Video Remote Interpretation I just used provided fully effective communication:
>
> ☐ Strongly agree ☐ Weakly agree ☐ Weakly disagree ☐ Strongly disagree
>
> If there was any problem with the communication, please explain:

These responses can be collected and analyzed. This recommendation is reflected in Exhibit D. (Settlement Agreement VI.A)

Recommendation 15: Inmates who communicate via sign language should not have their hands restrained when there is a need for effective communication, absent an individualized finding of security threat even with use of substitute security procedures (if necessary). If avoiding restraint of inmates' hands requires substitute security procedures, those should be written up and included in the documentation of the necessary processes for both VRI and in-person interpretation, and any appropriate equipment should be obtained and installed wherever it might be needed. (Settlement Agreement XI.A)

> **Recommendation 16 [Applies to KSR only]**: For situations since June 2015 in which KSR's procedures did not allow an inmate to communicate during a disciplinary

hearing—most importantly, in Inmate C's October 2015 hearing—the inmate should be given an opportunity to redo the hearing. This opportunity must be effectively communicated to the inmate, which itself should be done using interpretive services. (Settlement Agreement VII)

Recommendation 17 [Applies to KSR only]: Inmate D's 2016 Parole hearing should be redone, with an in-person Qualified Interpreter. (Settlement Agreement V.A.2)

Recommendation 18: When a Deaf inmate is seeking/receiving off-site medical care, staff at each facility should, as early as practicable, inform the relevant medical provider(s) that a Deaf Inmate requiring a Qualified Interpreter or other Auxiliary Aid or Service will be seeking medical care from those off-site medical providers at a particular date and time; in the case of an emergency, staff should provide such information as soon as possible, and should include the Deaf inmate's estimated time of arrival. There should be policies and procedures in place, implemented by appropriate training, to ensure that these notifications occur. (Settlement Agreement VI.D)

Recommendation 19: The process/forms for inmates to request interpretive services and other auxiliary aids and services should clearly encompass religious and any other volunteer-provided programming. (Settlement Agreement VI.A.3; VI.G.1)

Recommendation 20: Significant communications by the chaplains are covered by the requirement of effective communication. Therefore the chaplains, like other staff, should be trained in the requirements of this Agreement, and should ensure that if they have occasion to minister to a Deaf inmate—or simply inform him that a family member has died—they do so effectively, including using interpreter services if the inmate communicates using sign language. (Settlement Agreement VI.J)

Recommendation 21: The process for obtaining and using the VRI laptop should be communicated to each staff member who might have occasion to need it, and also to each inmate who communicates using sign language. Each such staff member should actually do a practice run using the machine—to figure out how/where internet access and power will be obtained, and how to use the program. The laptops themselves should be checked each time they are returned to their resting area, to ensure that they have sufficient battery power. Training should ensure that staff understand that the person communicating with the Deaf inmate should sit within easy reach of the laptop's microphone, and that the inmate must not have his hands handcuffed. (It would be useful to include a diagram or instructions on a piece of paper taped to the laptop's cover.) (Settlement Agreement VI [qualified interpreters]; IX.E [training and technology]; XI [hand restraints])

Recommendation 22: There should be some flexibility in the timing of VRI requests and usage; where a need arises that does not allow for 48 hours notice, VRI should nonetheless be made available if possible. Each facility should work out a process for VRI availability after hours and on weekends, as well as in emergencies. (Settlement Agreement VI.J)

C. *Videos*

Recommendation 23: Check each existing video used to determine whether it has captioning

and obtain replacements with captioning if available. Provide captions for all orientation videos, for newly acquired entertainment and educational videos, and other videos when captioning is available. For television captioning to be a real option, training for staff about how to turn it on and periodic testing are required. This should be done on a schedule, perhaps quarterly or twice a year, and it should be logged. (Settlement Agreement X.1)

Recommendation 24: For Deaf inmates who cannot hear crucial informative videos, and whose literacy level is insufficient to allow them to readily read captions, an alternative method of effective communication is necessary. For those who communicate using sign language, the prison should provide either a sign language inset, or an in-person Qualified Interpreter. (Settlement Agreement I.5; III.E; VI.J)

D. *Speech-to-text*

Recommendation 25 [KSR only, for right now]: KSR should continue to investigate the possibility of speech-to-text software for use in classroom and other appropriate settings. I will ask for a report on this issue six months. (Settlement Agreement V.A. 2; VI.E)

E. *Assistive listening systems*

Recommendation 26 [KSR only, for right now]: Investigate assistive listening systems for use in classroom and other appropriate settings. I will ask for a report on this issue in six months. (Settlement Agreement V.A. 2; VI.E)

Recommendation 27: Each facility should inform Deaf inmates of the various ways in which educational programming can be made more accessible to them; the school should put in place a process to facilitate requests for such accommodations and assess the need for them. (Settlement Agreement III.F; V.A. 2; VI.E)

F. *Written communication*

Recommendation 28: Written communication should be relied upon only for simple communication with literate inmates. For complex communications or less literate inmates, alternative methods are required. Staff should make best efforts to communicate with each deaf or hard-of-hearing inmate using that inmate's preferred communication method (which is assessed and recorded by Exhibit D-5). (Settlement Agreement I.5)

G. *Non-auditory alerts*

Recommendation 29: Each facility should expand the availability of non-auditory alert systems, providing them to inmates who cannot hear the fire alarm and/or the alert for count. To maximize the communication effectiveness of each non-auditory alert, it should be programmed to signal, in different ways, the several predictable alerts: fire/emergency; count, chow, "report to office." Staff must also be trained to use the office switch. Whether this is occurring will need monitoring; perhaps by using a daily log or checking in periodically with affected inmates. The monitoring system should be made formal. I will ask for a description of it, and perhaps relevant records, in the next quarterly reporting period. (Settlement Agreement VIII)

Recommendation 30 [KSR only, for right now]: Investigate the costs and benefits of a TV-based visual paging system. I will ask for a report on this issue in six months. (Settlement Agreement VIII)

Recommendation 31: Each facility should train staff to be alert to the possibility that a Deaf inmate may miss the alert for count, chow, or pill call—and to ensure nondiscrimination in that event. (Settlement Agreement VIII; II.A)

H. *Miscellaneous devices*

Recommendation 32: Each facility's commissary list should include various alerting devices that inmates might wish to purchase: caption-capable TVs, vibrating alarm clocks, and the like. Inmates should be informed that if they seek to purchase adaptive equipment that is not available via the commissary, they should request assistance from the ADA Coordinator; the ADA Coordinator should then facilitate the inmate's purchase unless the requested device presents an articulable and documented security risk. (Settlement Agreement XII)

I. *Other communications aids*

Recommendation 33: Investigate all the available topics for medical EZ Boards—both word and picture versions—and buy those that are useful, making them available for use by Deaf inmates. (Settlement Agreement V.A.2; VI.C; XII)

J. *Methods of communicating with Deaf inmates*

Recommendation 34: Staff should be trained on, and should use, best practices for communicating with hard-of-hearing inmates. (Settlement Agreement XIII.B)

Recommendation 35: Each facility should continue to provide Deaf inmates with ID cards that identify them as Deaf, and to post similar identification outside their cells. The notices required by the Agreement outside each housing unit and at the entrance to the institution should also be posted. (Settlement Agreement III.D.1)

K. *Teaching sign-language*

Recommendation 36: Each facility should try to offer classes in sign language, and should give Deaf inmates who would like to learn to sign both affirmative notice and preference for these classes. (Settlement Agreement II.A)

L. *Telecommunications equipment and rules*

Recommendation 37: Videophones should be located in areas as accessible to Deaf Inmates as conventional telephones are accessible to non-Deaf Inmates. The videophone should be available during the same days and hours as conventional telephones and should require permission for use only if the facility requires inmates to seek permission to use conventional telephones. If an escort is required to use the videophone at night, on weekends, or in other circumstances, such an escort should be routinely provided. (Settlement Agreement IX.A)

Recommendation 38: Even if an escort is required, there should be no requirement that inmates seeking to use the videophone, including with VRS, schedule such use in advance. Non-Deaf inmates are not required to schedule their phone calls, and that should be true for Deaf inmates, as well. (Settlement Agreement IX.A)

Recommendation 39: Ensure all staff are trained on videophone rules, so that they know that videophone access is to be provided during the same hours as conventional phone access, without pre-scheduling, and that time in transit doesn't count. (Settlement Agreement IX.A; XIII.B)

Recommendation 40 (Edited): Deaf inmates in segregated housing must be allowed access to telecommunications services equal to that of non-Deaf inmates in the same disciplinary or administrative status. The best solution would be to work out a method for such inmates—including those on "max assault status"—to use the videophone, with VRS when needed. This could be done by escorting the prisoner to the videophone or by enabling videophone capabilities on the VRI laptop. If there are individualized reasons that an inmate cannot have his hands unshackled consistent with security, he, and others in his situation, should be allowed access to the TTY. I will request each facility to report on what method for telecommunications access is developed for Deaf inmates in segregation, and why. (Settlement Agreement IX.A)

Recommendation 41: Ensure that disciplinary oversight of videophone is no more intense than oversight of conventional phone calls. The disciplinary committee should explicitly consider and rule on this issue when it is deciding a disciplinary matter involving the videophone or TTY. (Settlement Agreement IX.B)

> **Recommendation 42 [New recommendation 74 substitutes for this recommendation]**: KSR should review auxiliary aids that would allow hard-of-hearing inmates effective access to telecommunications, and should implement improvements—perhaps involving TTY, captioned telephones, and/or handset amplification. Asking inmates what does and doesn't work is a necessary part of this process. I will request a report on this review—both how it was conducted and the results—in six months. (Settlement Agreement IX; I.5)

IV. PROCESSES FOR ASSESSING AND REQUESTING AUXILIARY AIDS AND SERVICES

A. *Intake/Orientation*

Recommendation 43: Each facility should develop a process by which inmates whose hearing impairment substantially impedes communication are noted and assessed right away on arrival at the institution, immediate steps taken to ensure effective communication, including immediate interpretative services if necessary. (Settlement Agreement III.A; III.C)

B. *Literacy assessment*

Recommendation 44: Staff at each facility should assess each Deaf inmate's literacy prior to conducting additional assessment of necessary auxiliary aids and services. Educational staff should be able to propose and implement one of several quick assessment tools. For example, the

Slosson Oral Reading Test - Revised (SORT-R) might be suitable. If an inmate is not literate at at least the 8th grade level, reliance on written communication is unlikely to succeed in providing effective communication, and alternative methods should be used. (Settlement Agreement III.C; I.5)

C. *Individual assessment meetings*

Recommendation 45: For each Deaf inmate, the ADA Coordinator should conduct an individual services assessment meeting, at which the inmate's available methods of communication are expressly ascertained and recorded, and the inmate is informed about the available auxiliary aids and services. For an inmate who can hear (with or without an amplifier or hearing aid) well enough to understand the coordinator, information should be conveyed orally as well as in writing. If the inmate uses sign language, VRI would be the appropriate way to communicate for a meeting of this nature. The greatest challenge is presented if the inmate is not literate, does not hear well enough to understand spoken communication, and does not sign. In that case, visual demonstrations of the various auxiliary aids and services may be required. The assessment should be updated annually, ideally at the inmate's annual classification meeting. (Settlement Agreement III.C; I.5)

D. *Form and options*

Recommendation 46: The various forms related to requesting and using Auxiliary Aids and Services form should be changed in a number of ways:

- To list available aids and services more comprehensively
- To more clearly explain what the various services and aids are, in what circumstances they are available, and how to request them.
- To explain how to use the various devices.
- To ask inmates, expressly, about their preferred modes of communication or needed services, and why those are useful.

To explain which items are free of charge, and which are available only at the inmate's expense. (Settlement Agreement III.C; III.F)

Recommendation 47: I recommend replacement of the existing forms with several different ones, explaining the various options available, allowing requests for various types of communications assistance, and obtaining feedback from inmates (see Recommendation 14, above). These recommended forms are attached as Exhibit D, which also includes a recommended staff memo about the various available devices and accommodations, and an assessment form. These forms should be explained/filled out during the individual assessment meetings. (Settlement Agreement III.C; III.F)

E. *Additional methods for inmates to seek auxiliary aids and services*

Recommendation 48: The Healthcare Request form should include boxes to check if auxiliary aids or services, including remote or in-person interpretation, are needed. My recommended additions to this form are attached as Exhibit E-2. (Settlement Agreement V.A.2; VI.C)

Recommendation 49: All the forms by which inmates apply for jobs, educational programming, etc., should have language similar to that in the recommended Healthcare Request form. So should classification and disciplinary forms that notify inmates of impending hearings or meetings. I have not provided recommended versions of these forms, but will in a future reporting period ask to see them all. (Settlement Agreement V.A.2; VI.F; VI.E; VI.H; VII.A)

Recommendation 50: When Deaf inmates and staff discuss enrollment or application for a particular activity or program, communication should be effective—which means an interpreter may be required for the discussion—and should cover potential accommodations, auxiliary aids/services that could provide equal access to the activity/program. (Settlement Agreement V.A; VI)

V. TRAINING

A. *ADA Coordinator Training*

Recommendation 51: KYDOC should develop training on the Settlement Agreement and make it available to ADA Coordinators. For training on the ADA, the ADA National Network training is appropriate. (Settlement Agreement XIII.B)

B. *Staff Training*

Recommendation 52 [Training slides have now been provided and comments offered]: Training should be developed on all topics listed in the Settlement Agreement as requiring training. Once drafted, materials should be shared with me and with the Kentucky Commission on the Deaf and Hard of Hearing, for our input. This training is already long overdue; it should be provided to me for my input no later than July 1, finalized within 30 days after my comments are returned, and delivered to staff as soon as possible thereafter. (Settlement Agreement XIII)

VI. REPORTING

Recommendation 53: Ensure that all relevant staff know about the Agreement's reporting obligations, so that I am appropriately notified when any of the reporting-triggering events takes place. (Settlement Agreement II.A; VI.F; VIII.B.1; VIII.B.3; VIII.C; IX.C; XII)

Group 2 (December 2016)

I. IDENTIFICATION OF INMATES COVERED BY THE AGREEMENT.

Recommendation 54: Identification processes (Settlement Agreement III.A.1 [initial classification]; III.B [hearing assessment]; III.D.1 [identification cards])

a) Each facility should ask each inmate about any hearing difficulties during his or her initial medical screening, in their first day or two in the facility. Questions about hearing should be at the start of that screening, to allow accommodations, if needed, during the rest of the process.

b) All inmates should also fill out, in writing or orally, the multiple-question hearing screening. Exhibit B-2 is the recommended form. (See also prior recommendation 2.) This form should be administered by medical staff, to facilitate necessary medical followup.
c) If an inmate answers "yes" or "sometimes" in response to three or more of the screening questions, he should be seen in the next several days by a medical provider—a physician or nurse practitioner—for further evaluation, including a "whisper test" or other examination to assess whether there is a functional hearing problem.
d) If an inmate fails the "whisper test" or other hearing evaluation, the following should occur:
    - The inmate should receive an identification card to carry on his person, which states that the inmate is deaf or hard-of-hearing.
    - The inmate's name should be shared with the facility's ADA coordinator.
    - Two different alerts should be placed in his record, one in KOMS (the Kentucky Offender Management System), to alert correctional staff to the issue whenever they retrieve his computerized file, and the other in the EMR (Electronic Medical Record), to do the same for medical staff. Both alerts should be immediately obvious when the electronic file is opened. (See Figures A and B, above).
e) All inmates so identified should be included in the facility's semi-annual reports to me; if a particular inmate turns out not to be deaf or hard-of-hearing, because, for example, a medical problem that was obstructing his or her hearing is solved, that can be explained. (Note: the decision to send an inmate to an audiologist for evaluation or treatment is not the same as the decision to flag the inmate as deaf or hard-of-hearing.)

Recommendation 55: In order to ensure appropriate identification of deaf and hard-of-hearing inmates, all inmates' annual or other routine physicals should include the hearing questionnaire (Exhibit B-2). (Settlement Agreement III.B)

Recommendation 56: Each facility should ensure that the ID cards used to identify inmates as deaf or hard-of-hearing are clear, and should avoid abbreviations or other language that may not be clear. Each facility should ensure that every deaf or hard-of-hearing inmate is able to carry such a card at all times. If an inmate misplaces the card, a replacement should be promptly provided. (Settlement Agreement III.D.1)

II. ENSURING EFFECTIVE COMMUNICATION DURING INTAKE

Recommendation 57: Interpretation services should be offered without special request to any inmate (known by prison staff to use sign language to communicate) during initial medical screening or other intake medical encounters. Inmates are unlikely to know, during these early stages, that they need to request interpretation and how to do so. Medical staff should ask inmates who have difficulty hearing if they use sign language to communicate, rather than waiting for the ADA Coordinator's assessment. (Settlement Agreement III.A.1)

Recommendation 58: Each facility's medical office should keep pocket amplifiers on hand for all intake staff—medical, mental health, and custody—to use when the need arises. (Settlement Agreement III.A.1)

III. PROVISION OF AUDIOLOGY SERVICES

Recommendation 59: The ADA Coordinator for each KYDOC facility should maintain a document that tracks each deaf or hard-of-hearing inmate's progress through the process of obtaining any needed hearing aid, including the dates and outcomes of:

- the initial request/questionnaire
- each relevant medical visit
- any audiology visit
- hearing aid provision.

In order to ensure that inmates do not wait longer than two months for a necessary hearing aid, the ADA coordinator should check for progress for each affected inmate every week or two, updating the tracking document and working with medical staff to solve any procedural hurdles that arise. A recommended sample tracking document is provided as Exhibit F. (Settlement Agreement V.B; VIII.B.2)

IV. AUXILIARY AIDS/SERVICES

Recommendation 60: I commend KYDOC for developing a user-friendly pamphlet to cover the information needed by deaf and hard-of-hearing inmates; I recommend facilities use the edited version in Exhibit D-2; each facility should fill in the items marked with curly brackets ({ and }). (Settlement Agreement III.F)

A. *Personal hearing devices: Hearing aids and amplifiers*

Recommendation 61: Inmates with hearing aids should be able to obtain replacement batteries seven days a week, without difficulty or charge, regardless of their housing or programming assignment. (Settlement Agreement V.B)

Recommendation 62: Each facility should inform staff responsible for property moves that it is important for inmates to keep their hearing aids with them, even when they are moved into segregation or transferred. When an inmate is accidentally separated from his or her hearing aids, policy should allow the inmate to promptly obtain the hearing aids from storage or medical, or to get replacements. (Settlement Agreement V.B)

B. *Qualified Interpretation*

1. Video Relay Interpretation (VRI): Use and Procedures

Recommendation 63: Absent an emergency in which time is of the essence and VRI services are unavailable, no facility should rely on an inmate to interpret a communication that would ordinarily be private for another inmate. (Settlement Agreement VI; I.18)

Recommendation 64: Each facility should obtain and test a "splitter" for each VRI laptop, so that the laptop can be used alongside a computer. (Settlement Agreement IX.E.1)

Recommendation 65: Each facility should ensure that the VRI laptop routinely receives necessary software updates. (Settlement Agreement IX.E.1)

2. Religious and Volunteer-provided programming

Recommendation 66: For any religious programming—worship services, counseling, bible study, etc.—that is provided directly by the chaplain, each facility should provide qualified interpretation when requested by an inmate who needs it.

> *Prior Recommendation 20: Significant communications by the chaplains are covered by the requirement of effective communication. Therefore the chaplains, like other KSR staff, should be trained in the requirements of this Agreement, and should ensure that if they have occasion to minister to a Deaf inmate—or simply inform him that a family member has died—they do so effectively, including using interpreter services if the inmate communicates using sign language.*

C. *Video captioning*

D. *Speech-to-text*

E. *Assistive listening systems*

(Settlement Agreement VI.G.3)

Recommendation 67: Each religious, educational, and programming area should have available a device to allow wireless amplification for individual hard-of-hearing inmates. (Settlement Agreement V.A.2)

Recommendation 68: KSR should inform deaf and hard-of-hearing inmates of the various ways in which religious, educational, rehabilitative, and recreational programming can be made more accessible to them; all programming providers (educational, rehabilitative, and recreational) should put in place a process to facilitate requests for such accommodations and assess the need for them. (Settlement Agreement V.A; III.F)

F. *Written communication*

G. *Non-auditory alerts*

Recommendation 69: In any unit where there are deaf or hard-of-hearing inmates, each facility should implement (and ensure use of) written announcement boards. That is, all general announcements should also be promptly displayed on a written announcement board (e.g.: "X class is cancelled this evening," or "all inmates in X category are allowed an X privilege this afternoon"). Staff use of this announcement board must be monitored and audited. (Settlement Agreement VIII.B.1)

Recommendation 70: In order to provide effective and equal communications to deaf and hard-of-hearing inmates who are being individually paged, staff should check KOMS to see if that inmate has a deaf/hard-of-hearing alert; if a deaf or hard-of-hearing inmate does not answer the auditory page in a minute or two, he or she should be individually alerted to the page by a staff member. This could be done by in-person notification or by provision of a personal paging system. (Settlement Agreement VIII.A)

Recommendation 71: Each facility should train staff to be alert to the possibility that a deaf or hard-of-hearing inmate may be unable to hear an order or instruction issued verbally; training should cover strategies to avoid bad results. (Settlement Agreement XIII.B; II.A)

H. *Miscellaneous devices*

I. *Speech*

Recommendation 71: In each facility's settings in which staff ordinarily talk to a group of inmates—orientation, education, etc.—consideration should be given to talking to any hard-of-hearing inmate one-on-one, instead. For example, for someone who is having difficulty hearing a teacher in a group setting, even with assistive listening devices (see IV.E, above), a tutor might be a better option than a congregate GED class. (Settlement Agreement XIII.B)

J. *Teaching sign-language*

Recommendation 72: Deaf or hard-of-hearing inmates who do not have their GED should be among those allowed to enroll in any classes in sign language. Each facility should obtain resources relating to sign language—books or computer-based instruction—and make those available to deaf and hard-of-hearing inmates. (Settlement Agreement II.A)

K. *Telecommunications equipment and rules*

1. Videophone and VRS

2. TTY

Recommendation 73: Each facility should maintain its TTY and develop a facility protocol for how to make it available to inmates, covering who the inmate should request it from, where it should be connected, etc. In addition, each facility should annually test its TTY and the protocol by calling me at an agreed upon time using direct TTY and the relay service. TTY instructions should be left with the TTY at all times. (Settlement Agreement IX.D.1)

3. Hard-of-hearing inmates

Recommendation 74 (substitutes for prior recommendation 42): Each facility should improve access of hard-of-hearing inmates to telecommunications, by:

(a) Allowing them access to TTYs.
(b) Informing them that amplified phones are available, and ensuring that at least one such phone, whose amplification is compatible with a hearing aid but does not require one, is

available in every group of phones used by any hard-of-hearing inmate.
(c) Providing access to captioned telephones, unless on investigation such telephones are not available in the institutional setting.

I will request a report on implementation each aspect of this recommendation.

(Settlement Agreement IX.A)

V. THE INTERACTION OF COMMUNICATION NEEDS AND HOUSING ASSIGNMENT

A. *Segregated housing*

B. *Other housing needs*

Recommendation 75: Each facility should develop a method for considering how communications difficulties with deaf and hard-of-hearing inmates can be minimized by particular housing assignments, and shall make such assignments when appropriate. (Settlement Agreement II.A)

VI. PROCESSES FOR ASSESSING AND REQUESTING AUXILIARY AIDS AND SERVICES

VII. FORM AND OPTIONS

Recommendation 76: Each facility should include notice in its Inmate Handbook of the facility's basic obligation to avoid discrimination and provide effective communication, and inform inmates to contact the ADA Coordinator if needed. Something like the following would be appropriate:

> Americans with Disabilities Act and Deaf and Hard-of-Hearing Inmates
>
> An inmate with a verified disability will have the opportunity to participate in services, privileges, and programs similar to other inmates at this institution. If you are deaf or hard-of-hearing, you should contact the designated institutional ADA Coordinator; each living unit and inmate public areas has contact information posted. All {name facility here}-provided services will provide effective communication and make available qualified interpreters when needed. Qualified Interpreters and Auxiliary Aids and Services are available for an inmate with a verified disability upon request. It is the inmate's responsibility to request an interpreter from volunteer organizations or individuals that are providing activities and services. An inmate who meets criteria to be accommodated under the ADA will be provided identification to facilitate effective communication. If at any time an inmate chooses to not wear the identification, he/she shall sign a waiver document to be placed in the institutional file.

(Settlement Agreement II.A)

VIII. TRAINING

A. ADA Coordinator Training

B. Staff Training

Recommendation 77: In addition to the computer-based KYDOC training, live, in-service training should cover, at least:

a) For all staff:
- The identity and role of the ADA Coordinator
- Existence of KOMS and EMR alerts for deaf and hard-of-hearing inmates, and the obligation to check for the alerts.
- The occasions and process for obtaining access to the VRI laptop, and how to use the laptop, including where different people should sit to maximize communication effectiveness. (For medical, educational, and housing staff, this training should be done on-site, so each affected staff member can see where and how the laptop can be set up.)
- The occasions and process for obtaining an in-person qualified interpreter.

b) For housing area staff:
- The use of cell/bed notices that an inmate is deaf or hard-of-hearing
- The use of the bed shaker switch.
- Telecommunications issues, including how to obtain and use a TTY, and the policies and procedures governing TTY and videophone usage.
- The obligation to notify deaf and hard-of-hearing inmates of alerts, including emergency alerts and non-emergency pages.

c) For all corrections staff:
- The requirements to accommodate inmates who use sign language to communicate by using restraints that allow them to sign, and how to implement those requirements.
- Strategies for dealing with inmates who may not hear directions or orders, especially when given from behind or above them.

d) For medical staff:
- The responsibility of running a process to provide medically necessary hearing aids within two months, and what that actually entails, in terms of adjusting ordinary processes and timing.
- The obligation to notify off-site medical provider(s) that a Deaf Inmate requiring a Qualified Interpreter or other Auxiliary Aid or Service will be seeking medical care, and how this obligation is being assigned.

(Settlement Agreement XIII; IX.E.2; III.D.2)

IX. REPORTING

Recommendation 78: The ADA Coordinator should obtain monthly reports based on both KOMS and medical records of each inmate in the facility who is deaf or hard-of-hearing, and

should check those reports too add to the Coordinator's tracking list. (Settlement Agreement XV.B.1)

Recommendation 79: Each facility's quarterly written summary of grievances by deaf and hard-of-hearing inmates should include all such grievances, not only the ones that are deemed related to effective communication, auxiliary aids and services, or other issues raised in the Settlement Agreement. (Settlement Agreement XIV.3)

Group 3 (April 2017)

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. (Settlement Agreement V.A.2)

Recommendation 81: Medical staff should ensure that inmates with a need for audiology services are not charged inappropriately, and should avoid repeated charges for ongoing efforts to obtain hearing aids or other services. (Settlement Agreement V.B)

Recommendation 82: Each VRI should be the subject of a log sheet that tracks its usage, including staff member, date and purpose. In any institution that houses one or more inmates who use sign language to communicate, the ADA Coordinator should check the VRI log sheet at least once each week, and should ensure that the VRI is being used on appropriate occasions, not just for classification and disciplinary meetings, but for other important conversations between the inmate and staff. (Settlement Agreement VI.A, III.C; VI.C.4; VI.H; V.A.2; VII.A; VI.J)

Exhibit C: How to Communicate Effectively with Hard-of-Hearing Inmates

How to Communicate Effectively with Hard-of-Hearing Inmates

Adapted from material published by the U.S. Department of Justice, Civil Rights Division, Disability Rights Section
(last revised 4/19/2017)

Starting the conversation

- ✓ Always get the inmate's attention before you start speaking .
- ✓ Just because an inmate is wearing a hearing aid does not mean they can hear you.
- ✓ Ask if the inmate can understand you, or needs some adjustment; you may want to write a note to ask him or her what communication aid or service is needed.
- ✓ Provide accommodations if and when requested.
- ✓ Minimize background noise and other distractions whenever possible.
- ✓ Allow extra time for communication.

Lighting and facilitating lip-reading

- ✓ Face the inmate and maintain normal eye contact. Do not turn away while speaking.
- ✓ Try to converse in a well-lit area, but avoid glare or back-lighting that puts your mouth in shadow.
- ✓ Do not cover your mouth or chew gum while you are speaking.

Simple language, normal speech

- ✓ Speak at a normal pace, enunciating clearly.
- ✓ Speak with simple, direct words.
- ✓ Do not shout or exaggerate mouth movements .

Visual cues

- ✓ Use gestures and facial expressions to reinforce what you are saying.
- ✓ Use visual aids when possible, such as pointing to printed information on a document.

Check on understanding

- ✓ Remember that only about 1/3 of spoken words can be understood by speech (lip) reading.
- ✓ Be conscious of bluffing.
- ✓ Check on understanding: ask the hard-of-hearing inmate to repeat back to you, so you can be sure he or she understood.
- ✓ For anything but the most simple communication, written notes can be a problem. Keep in mind that many people—especially those who use sign language—may lack good English reading and writing skills.

Prison-Specific Communications Issues

- Prisons are noisy: To minimize noise from other inmates, fans, televisions, etc., you may want to step into an office or another quieter area.
- Prisons require situational awareness. To effectively communicate with deaf or hard-of-hearing inmates, an officer must face them directly and not move his or her head too much. This may make it difficult to monitor the surroundings. So you may want to have the conversation in a place that is out of the way, like a corner or an office, where situational awareness is less challenging.

Exhibit D: Auxiliary Aids/devices currently in place or under test at KYDOC institutions

Memo to: KYDOC Director of Operations Chris Kleymeyer, Wardens, ADA Coordinators,
From: Margo Schlanger
Re: Auxiliary Aids/devices currently in place or under test at KYDOC institutions
Date: April 19, 2017

This is a list of devices related to the communications needs of deaf and hard-of-hearing inmates that are currently in place at some KYDOC institutions. For each one, information is provided on the device (manufacturer, model, etc.) and on some of the considerations relevant to its use. If only one or two institutions are currently using the device, they are listed. At the end (part 11), I describe a few additional devices that may prove useful in the future.

1. VRI/VRS laptop 2
2. Non-auditory alert systems ("bed shakers") 2
3. Personal amplifiers ("pocket talkers") 3
4. Videophone 3
5. TTY 3
6. Phone volume control 4
7. Phone amplifier 4
8. Captioned telephone 5
9. Pager 5
10. Assistive listening systems 6
    - FM transmitter for televisions or other sound sources 6
    - Induction loop system 6
    - FM transmitters 7
    - Personal FM system 7
11. Other devices not yet in use 7
    - Earphones for parole board 7
    - Other personal FM devices 8
    - Conference microphones 8

1. VRI/VRS laptop

Video Remote Interpretation (VRI), accessible via a dedicated laptop, allows a hearing person and a deaf person who signs, who are next to each other, to communicate with each other. The hearing person speaks into a laptop microphone and an interpreter on the other end translates the speech into sign language, which the deaf person can see on the laptop screen. The deaf person signs into the laptop camera, and the interpreter on the other end translates the sign language into English, which the hearing person can hear.

Each KYDOC Institution has at least one dedicated VRI laptop, which have preloaded software from Purple, to facilitate easy use.

In order to work smoothly, the VRI should have the following items with it:

a) A long computer cord.
b) A splitter, to allow both a computer and the VRI to be used simultaneously.
c) A long extension cord.
d) A log sheet, to record who uses it and when
e) Depending on the use, a special external microphone may be helpful.

2. Non-auditory alert systems ("bed shakers")

For inmates who cannot hear the fire alarm or various announcements for count or chow or pill call, when they are in their cells, a "bed shaker" can be a useful non-auditory alert system. Placed under an inmate's mattress, it lights up and buzzes. It should be installed to go off automatically in the event of a fire alarm, and can be installed to go off (with a different signal) when triggered by a light switch in a control room. (This latter approach requires control room staff to flip the switch when it is needed—which staff may be reluctant to do.) A bed shaker is less necessary in a dorm setting, because in a dorm, other inmates' responses to alarms or announcements alerts the deaf inmate about what is going on. In addition, some inmates feel that using a bed shaker in a bunk bed would probably disturb their bunkmate.

Bed shakers are plugged into the wall, like an alarm clock. The triggering signal is wireless—so they may work only in certain cells, depending on the configuration chosen for installation. Most of the KYDOC prisons are currently using bed shakers for one or two inmates. I believe several models are in current use at KYDOC, including the Silent Call Legacy Series (SU5001-V). See http://silentcall.com/product/legacy-series-shake-318-mhz-receiver-vibrator-su5001-v/.

3. Personal amplifiers ("pocket talkers")

Personal amplifier devices are offered to inmates in need of temporary amplification while they wait for more significant audiology services, or perhaps if they don't qualify, medically, for a hearing aid. I believe that all the KYDOC institutions are using these devices; CCS buys them via McKesson, its medical supplier.

Several models have been used, including the Posey 8274 Sound Amplifier and others; they cost under $40.

4. Videophone

KYDOC mostly uses videophones provided by the company "Purple." They are in videophone kiosks, made available to inmates who sign to communicate during the same hours as regular phones are available to other inmates. (At KSP, they have both a Purple videophone and also one from the company Sorenson.)

These videophones allow both "video to video" calls, which allow a sign language user to call anyone with a videophone and communicate using sign language, and Video Relay Service ("VRS") calls, which allow sign language user to call a hearing person who uses a regular telephone; a sign language interpreter, connected automatically, relays the communication. For VRS, the inmate signs and the remote interpreter interprets, speaking to the person on the regular telephone.

Because signing, with or without an interpreter, takes longer than talking, the Settlement Agreement specifies that institutional rules should allow each call to last up to twice as long as allowed for regular phone calls.

5. TTY

A TTY or "**T**ele**TY**pewriter" (sometimes called a TDD, Telecommunications Device for the Deaf) is a device has a

keyboard and display that allows the user to send and receive typed messages over telephone lines.

A stand-alone TTY cannot communicate directly with a regular phone; it can communicate only with another TTY. So TTY users can directly call other TTY numbers or they can call a regular phone using a Relay Service. The Relay Service operator will receive the messages on a TTY and relay the messages, by standard phone, to a person who does not have a TTY. The number for Kentucky's relay service is 711.

TTYs are used less than they used to be: most deaf people prefer to use a videophone, so they can sign rather than type to communicate. But every KYDOC facility has a TTY, and some deaf inmates will choose to use them. To work, TTYs need access to an outside phone line. In some facilities, they are placed near the videophone in a cabinet and access is provided without any special request. It is important that access to TTYs be made easy, just as access to other phones is. The ADA Coordinator should test the device and put very clear and explicit instructions with it, so users can avoid problems.

Because using a TTY is very slow, the Settlement Agreement specifies that institutional rules should allow each call to last up to three times as long as allowed for regular phone calls

6. Phone volume control

Some but not all the KYDOC payphones have volume controls. The phones with volume controls have varied indicators:

There should be at least one phone with a volume control in every group of phones where a hard-of-hearing prisoner might use phones—including in restrictive housing.

7. Phone amplifier

For inmates who need more amplification than the built-in volume adjustment can offer, a portable telephone amplifier may be helpful.

This Harris Portable Telephone Amplifier (cost, approximately $20) is currently being tested at LLCC Its usefulness depends on the particular user's degree of hearing impairment and hearing aid type. So far, some inmates find it very simple and helpful. Others don't like it.

8. Captioned telephone

A captioned telephone works like a regular telephone but also displays, as text, every word the person on the other side of the line says. Captioned telephones are useful for people whose hearing impairment interferes with ordinary phone usage, but who speak to communicate. Captioned telephone users can listen to the person they have called, and can also read the written captions. (The captioning service is provided for free pursuant to FCC rules.)

Currently, KSP has installed one captioned telephone, a CapTel 840i. For more information, see http://www.captel.com/captel. It uses a phone line and an internet line. At KSP, it is installed in a locked cabinet: it is available to appropriate inmates during normal phone times, after they request the unit officer to unlock the box.

Because the phone uses an analog microphone, it is not easily compatible with the Securus voice recognition system. So KSP had Securus remove the voice biometrics password; the inmate still uses his pin number to complete a call. Approximate cost for the phone: $75.

9. Pager

For inmates who cannot hear themselves paged when they are on the yard or otherwise away from their cells, a pager may be helpful. KSP and KCIW are using alphanumeric pagers with several pre-programmed messages. Pagers have two parts: the transmitter and the receiver. The models pictured, which are used at KCIW, are made by Long Range Systems, or LRS:

Pagers work better for outdoor areas rather than inside thick walls. The pager above, the LRS TX-7470, has a range of about a mile. Approximate cost: $600 for a transmitter, $120 for a receiver

10. Assistive listening systems

Assistive listening systems capture sound close to its source via a microphone and transmit that sound directly to people's earphones or hearing aids. Such systems can be extremely helpful to people who are hard-of-hearing, because they allow the listener to amplify the sound without distortion and without amplifying the ambient noise.

For more information on assistive listening devices and systems, see:

- Hearing Loss Association of America, *Get in the Hearing Loop*, available at http://www.hearingloss.org/sites/default/files/docs/HLAA_ALDS_Brochure_0.pdf;
- David G. Myers, *We've Looped in West Michigan. Could We Loop America?*, HEARING LOSS MAGAZINE, September/October 2008, at 18, available at http://www.hearingloss.org/sites/default/files/docs/MeyerSepOct08 AudioLoopHLM.pdf.

For a technical guide to choices available for educational settings in particular (though geared to children rather than adults), see:

- American Academy of Audiology, *Practice Guidelines: Remote Microphone Hearing Assistance Technologies for Children and Youth from Birth to 21 Years* (updated April 2011) available at http://audiology-web.s3.amazonaws.com/migrated/HAT_Guidelines_Supplement_A.pdf_53996ef7758497. 54419000.pdf
- American Academy of Audiology, *Practice Guidelines: Remote Microphone Hearing Assistance Technologies for Children and Youth from Birth to 21 Years, Supplement B: Classroom Audio Distribution Systems—Selection and Verification*, July 2011, available at http://audiology-web.s3.amazonaws.com/migrated/20110926_HAT_GuidelinesSupp_B.pdf_53996ef98259f2.45364934.pdf.

Several systems are in use at KYDOC facilities:

- *FM transmitter for televisions or other sound sources*

Several KYDOC institutions currently use FM transmitters to transmit sound from dorm or dayroom TVs to FM radios inmates can purchase. At WKCC, they are also using the same kind of device as an assistive listening system for the chaple; it is attached to a sound system and then transmits to the radio (on a different frequency). Approximate cost: $50. See http://www.ccrane.com/transmitter.

- *Induction loop system*

Induction loop systems work with hearing aids or with specially purchased earphones. For permanent systems, an induction loop wire is installed (for example, around the walls or in the ceiling). For portable systems, the loop is portable and covers less distance—more like 4 or 5 feet in front of the system. Either way, the loop links to a microphone that is used by a speaker. The person talking into the microphone generates a current in the wire, which creates an

electromagnetic field in the room. Listeners with hearing aids can switch the hearing aids to the "T" (telecoil/telephone) setting; then the hearing aid telecoil picks up the electromagnetic signal. Listeners can then adjust the volume of the signal through the hearing aid. Most new and newish hearing aids have T-coils, including all those fitted by "Hears to You." Receiving headphones can, however, be used by anyone, and cost very little. (E.g., http://www.harriscomm.com/oval-window-induction-loop-receiver-headphone.html.)

LLCC, is testing a portable induction loop system. See http://www.harriscomm.com/oval-window-portable-infoloop-induction-loop-system-with-external-clip-mic.html.

- *FM transmitters*

The FCC has reserved several FM frequencies for use for assistive listening (72-75 MHz and 216 MHz). For more details see https://www.listentech.com/should-i-use-72-mhz-or-216-mhz/.

This kind of FM system is used by many churches to transmit to the earphones/receivers that are given to attendees. At LLCC, they are trying out a low wattage wireless system, the Peavey Assisted Listening system (72.9 Mhz).

- *Personal FM system*

Other FM systems, including a "personal FM system," may use other frequencies. To use a personal FM transmitted system with a receiver, one person wears a microphone; the other puts some earbuds or a headset into the receiver. One such system is currently on order to test at KSR. See http://www.lssproducts.com/product/Nady-Personal-FM-System/personal-fm-systems.

11. Other devices not yet in use

Finally, some other devices and technical resources I have mentioned, that may prove useful in the future, but will need testing.

- *Earphones for parole board*

Parole board hearings are done using remote video. For inmates who use sign language to communicate, an in-person interpreter is necessary for effective communication in these circumstances. For an inmate who is hard-of-hearing, the television speaker may be very difficult to hear. Such inmates should be offered earphones, ideally with a long cord and volume control.

- *Other personal FM devices*

There are a variety of personal FM transmitters and receivers available. This one may or may not work with a pocket talker – but it's inexpensive enough that it seems worth trying. https://www.amazon.com/gp/product/B01N6NH2Z2/.

- *Conference microphones*

When the VRI laptop is being used, sometimes the microphone quality is insufficient. An external microphone may be helpful. The type of microphone that seems most appropriate is a "conference microphone." In fact, with a better microphone, if people are careful not to speak at the same time, it's possible the VRI will even prove adequate for interpretation of a situation in which several people are speaking—for example, a class that includes some, though not a great deal, of class discussion. It would be worthwhile to try this out. One possibility, which I have not tested but offer because it has good consumer ratings, is this:

MXL AC404 USB Conference Microphone, https://www.amazon.com/gp/product/B001TGTDFM/. Cost: ~ $85.