IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

STEVEN BROWN, *et al.*,	*	
	*	
Plaintiffs,	*	
	*	
v.	*	
	*	CIVIL ACTION NO. RDB-16-945
DEPARTMENT OF PUBLIC	*	
SAFETY AND CORRECTIONAL	*	
SERVICES, *et al.*,	*	
	*	
Defendants.	*	

* * * * * * * * * * *

CORRECTED MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT AGAINST DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES AND STEPHEN MOYER UNDER THE AMERICANS WITH DISABILITIES ACT AND SECTION 504 OF THE REHABILITATION ACT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Regulations

Rules

Other Authorities

INTRODUCTION

This memorandum sets forth in dry legal language the facts and law surrounding the grim existence of blind Maryland prisoners created by the unlawful discrimination of Defendants, Secretary Stephen Moyer and the Department of Public Safety and Correctional Services ("DPSCS").

All sighted prisoners have effective access to the rules and rights that govern their incarceration, as laid out in the Inmate Handbook and in directives posted on bulletin boards. Blind prisoners do not. Exercising their rights requires using printed forms, something the blind prisoners cannot do independently. Sighted prisoners can request a medical appointment, file a grievance, or order from the commissary at will. Blind prisoners must depend on the kindness of strangers and sometimes, as this record demonstrates, that kindness predictably comes with a price—in money or in sex. The very ability of blind prisoners to move around the prison requires their dependence on other prisoners—a dependence fostered and institutionalized by Defendants even though their own policies trumpet the dangers of allowing one prisoner power over another. When Defendants' own medical staff determines that a blind prisoner requires single celling, Defendants feel free to ignore the medical order. Blind prisoners who, by virtue of their offense, sentence, or prison record might be entitled to assignment to a minimum security institution are kept in a medium security prison simply because they are blind. The facility in which they are housed lacks access to the many rehabilitative programs available in other institutions. Ironically, while one might think that keeping all blind prisoners in one facility would make providing accommodations and accessible programs more convenient for DPSCS, the "designated facility for the blind" provides very little to make even its limited programs available to blind inmates. Most cruelly, being a blind Maryland prisoner means doing more time and being less prepared for freedom, because the Defendants arbitrarily and unlawfully deny blind prisoners, on the basis of blindness, the high value work assignments that would allow them to garner good time credits while learning job skills that would be useful on release. Defendants deny blind prisoners even

effective access to legal and other information and the means by which, with independence and privacy, to write a complaint about these fundamental and entirely unnecessary acts of discrimination.

Plaintiffs are nine current and former blind or low-vision inmates incarcerated by DPSCS. Because of their blindness, DPSCS has (1) denied Plaintiffs equally effective access to a host of important and mandatory print materials; (2) denied them reasonable modifications necessary to allow them safe access to prison facilities and housing; (3) segregated them at two medium security facilities regardless of their security classification; and (4) excluded them from high-value work assignments. As a result, DPSCS has punished Plaintiffs twice: once for their crimes and again for their disabilities. DPSCS engaged in these acts knowingly and with deliberate indifference to Plaintiffs' federal rights.

The undisputed facts establish that Defendants DPSCS and Secretary Stephen Moyer, in his official capacity ("Defendants"), have violated and continue to violate Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 ("Section 504"), and Title II of the Americans with Disabilities Act, 42 U.S.C. § 12132 *et seq.* ("ADA," or "Title II"). Accordingly, this Court should grant Plaintiffs' Motion for Partial Summary Judgment and hold a hearing on the injunctive relief required to bring an end to this continuing and pervasive discrimination.

STANDARD OF REVIEW

Summary judgment is appropriate when, based on the pleadings, depositions, documents, answers to interrogatories, admissions, and properly sworn affidavits, "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986).

UNDISPUTED FACTS

I. Plaintiffs Are Blind or Low-Vision.

According to one of DPSCS's treating ophthalmologists, Russell Hopkins, Tyrell Polley, Sedric Holley, Johnny James, and Maynard Snead each are totally blind. Ex. 1, Decl. Amy

Green-Simms, M.D. ¶¶ 4, 9–19. Mr. Hopkins, Mr. Polley, and Mr. Holley had no light perception at all while in DPSCS custody. *Id.* ¶¶ 6–7, 9–12. Mr. James had his left eye removed sometime between 2011 and 2013, and the vision in his right eye has deteriorated to such a degree that he has been totally blind since at least December 2014. *Id.* ¶¶ 13–15. Mr. Snead has had no light perception in his right eye since at least August 2013. *Id.* ¶ 16. The vision in his left eye was sufficiently impaired at that time to make reading and navigation difficult. *Id.* Since 2013, Mr. Snead's left eye vision has steadily deteriorated, allowing him only occasional light perception between 2015 and 2017. *Id.* ¶¶ 16–18. He, too, now is totally blind. *Id.* ¶ 19.

According to Dr. Green-Simms, Mr. Delano has albinism and nystagmus (causing uncontrolled eye movement) as well as light sensitivity, which in her opinion, would cause him to struggle to read print and navigate. *Id.* ¶¶ 20–22; *see* Ex. 2. Similarly, at least since July 2014, the damage to Mr. Hammond's optic nerves in both eyes due to multiple sclerosis causes him great difficulty getting around on his own, reading print (even large print), recognizing faces, and identifying buildings even from close range. Ex. 1 ¶¶ 23–25. Mr. Hammond's medical records show that his vision deteriorated significantly in early 2013. Ex. 3.

Dr. Green-Simms confirmed that as of December 2015, Mr. Brown could see only her hand moving in front of his face from two feet away. Ex. 1 ¶ 29. She would have used this examination technique only if he could not see any letters on the eye chart or determine how many fingers she was holding up in front of his face. *Id.* Moreover, Dr. Green-Simms confirmed that Mr. Brown had very cloudy vision and at that time would have had difficulty seeing food on his plate, recognizing faces, or reading unless the print were enlarged. *Id.* ¶ 30. She stated that Mr. Brown would have had trouble navigating on his own without orientation and mobility skills. *Id.* ¶ 30. Mr. Brown's medical records show that he has experienced low vision since at least 2007. Ex. 4.

Mr. Wilson's right eye was removed in February 2015. Ex. 5. Mr. Wilson's remaining eye is compromised due to cataracts that cause blurriness and difficulty with reading standard

print without magnification. Ex. 1 ¶¶ 31–34. Dr. Green-Simms noted that Mr. Wilson required a single cell "due to low vision" in October 2014. Ex. 6.

During their time at RCI, Plaintiffs were all assigned to the tier designated to house blind inmates. *See* Ex. A, Franklin Dep. 15:1–4 (housing unit 1, A tier is the blind tier); Ex. 7; Ex. 8; Ex. 9; Ex. 10; Ex. 11; Ex. 12; Ex. 13; Ex. 14; Ex. 15.

II. Structure of DPSCS.

DPSCS is overseen by the DPSCS Secretary. Ex. 16. Within DPSCS, the Commissioner of Correction supervises the wardens at each DPSCS prison. Ex. B, Corcoran Dep. 46:13–20. Roxbury Correctional Institution ("RCI") and Eastern Correctional Institution ("ECI") are facilities within the Division of Correction, each of which is managed by a Warden or Acting Warden. Ex. C, Campbell 30(b)(6) Dep. 66:17–67:15; Ex. D, West 30(b)(6) Dep. 8:20–9:9 (Feb. 21, 2019). DPSCS contracts with the Maryland Department of Labor, Licensing and Regulation ("DLLR") to provide educational, vocational shop, and library programs, services, and activities at RCI and ECI. Ex. 17; Ex. E, Reid 30(b)(6) Dep. 172:7–10, 190:4–8, 192:5–11. DPSCS contracts or otherwise arranges with third-party entities to provide medical services and other programs, services, and opportunities to inmates at RCI. Ex. F, Baucom 30(b)(6) Dep. 37:10–38:9; *see, e.g.*, Ex. E, Reid 30(b)(6) Dep. 291:4–292:11.

III. DPSCS Systems and Processes for ADA and Section 504 Compliance.

RCI has more than 50 employees. Ex. G, Miller Dep. 57:2–13. Because RCI is part of DPSCS and DOC, each of those entities also has more than 50 employees. Although RCI held blind inmates since well before 2013, it was not until 2017, over a year after the start of this litigation, that RCI appointed an ADA Coordinator responsible for inmate ADA issues. Ex. H, Morgan Dep. 19:4–20:8. DPSCS did not appoint a department-wide ADA Coordinator for inmate ADA issues until 2017. Ex. B-102; Ex. B, Corcoran Dep. 130:1–2.

Neither DPSCS nor RCI has instituted a specific process for inmates with disabilities to request reasonable modifications or auxiliary aids or services under the ADA or Section 504. DPSCS's directive on ADA compliance provides no process by which inmates should request

reasonable modifications or auxiliary aids and services, no one who is responsible for approving such requests, and no procedure by which to complain about their denial. Ex. I-3. Nor does the RCI or DOC Inmate Handbook include any notification to inmates with disabilities of their rights to reasonable modifications or auxiliary aids and services or any instruction on how to make requests under the ADA or Section 504. Ex. 18, at BROWN 3012 (2016 Inmate Handbook providing only a general statement of nondiscrimination); Ex. I-5, at 3081 (2017 Inmate Handbook adding note that inmates with disabilities can seek assistance with administrative remedy procedures ("ARPs") from ARP Coordinator or case manager).

DPSCS's witnesses universally testified that there is no particular process for requesting reasonable modifications or auxiliary aids or for processing such requests. Ex. E, Reid 30(b)(6) Dep. 91:12–15 (to whom an inmate should make auxiliary aid requests has "never really been defined"); *id*. at 84:9–86:3 (discussing staff training on disability issues and stating that there is no training on how to respond to inmate accommodation requests); Ex. J, Barnhart Dep. 82:12–15 (case manager unaware of whether RCI has a policy for how inmates with disabilities can request accommodations or auxiliary aids); Ex. K, Baker Dep. 71:18–72:1 (case manager does not know what to do with accommodation requests); Ex. L, Conrad Dep. 32:7–15 (RCI has no policy in place for how inmates with disabilities can request accommodations); Ex. A, Franklin Dep. 72:10–73:16 (same). DPSCS's designee admitted that formal processes such as ARPs are inappropriate means for seeking accommodations, Ex. E, Reid 30(b)(6) 119:9–16, and the process for staff receiving a request is simply to take it to their supervisor, Ex. E, Reid 30(b)(6) Dep. 85:8–21, 325:6–326:3.

Blind inmates are expected to know, without being told, Ex. C, Campbell 30(b)(6) 156:4–9, that they can ask for accommodations from whoever runs the program they want to participate in, Ex. E, Reid 30(b)(6) Dep. 115:14–116:1, 153:9–18, 154:13–155:19, 166:20–167:6; or a department head, Ex. C, Campbell 30(b)(6) 134:3–12, 139:19–140:8; or a correctional officer or case manager, Ex. E, Reid 30(b)(6) Dep. 67:7–11, 120:7–121:18 (stating that inmates are told at orientation generally that "if there is anything you need, please contact your case manager."); *see*

also id. at 119:1–8 (inmates would just know they could ask anyone). However, such staff, when asked, were unaware of the obligation to arrange accommodations. Ex. J, Barnhart Dep. 55:1–8, 71:17–73:10, 80:20–81:20; Ex. L, Conrad Dep. 13:19–14:13, 26:13–18, 28:20–29:4, 30:9–14, 31:18–32:6; Ex. K, Baker Dep. 154:12–155:19, 159:14–162:1; 201:9–15; Ex. A, Franklin Dep. 16:10–17:4. DPSCS's designee admitted that case managers were not responsible for providing auxiliary aids. Ex. E, Reid 30(b)(6) Dep. at 64:3–10.

IV. DPSCS's Communications with Inmates.

A. DPSCS Communicates with Inmates About Its Services, Programs, and Activities Principally Through Standard Print Documents.

DPSCS provides access to many of its programs, activities, and services through reading and writing but does not provide documents in alternative formats that blind inmates can access independently, such as large print, audio, Braille, or accessible electronic formats that could be accessed on a computer with the use of a screen reader or screen magnification software. Ex. E, Reid 30(b)(6) Dep. 116:19–117:19, 201:11–16; Ex. C, Campbell 30(b)(6) Dep. 128:14–21; Ex. M, Gelsinger Dep. 108:11–109:18; Ex. D, West 30(b)(6) Dep. 51:15–52:15; *see* Ex. 19, Olivero Rpt. 6, 20–27 (discussing alternative formats for print usable by blind people). Although technology is available that would allow blind inmates to access print and electronic material independently, Ex. 19, Olivero Rpt. 11–16, as discussed below, such technology was not available at RCI until very recently, and much of it remains inoperable.

When inmates want to make a request or register a complaint, they can use either an informal or formal grievance process, each of which relies on the submission of a print form. The informal request process depends on submission of an informal complaint form or another written document. Ex. C, Campbell 30(b)(6) Dep. 99:21–100:11; Ex. D, West 30(b)(6) Dep. 50:21–51:14. That form is not available in any alternative formats. Ex. E, Reid 30(b)(6) Dep. 116:15-117:19; Ex. D, West 30(b)(6) Dep. 51:15–52:15. The formal complaint process, known as the ARP, requires use of a print form that is not available in large print or any other accessible format. *See* Ex. E, Reid 30(b)(6) Dep. at 201:11–16 (stating that the ARP form is not available in

large print and that "we are not allowed to manipulate forms"). Inmates appealing ARP denials to the Inmate Grievance Office ("IGO") must submit a print form. Ex. C, Campbell 30(b)(6) Dep. 128:1–21. Defendants' responses are written and not provided in any alternative formats, thereby making Plaintiffs dependent on the kindness of others in the prison for the entire process. *Id*. at 124:9–11; *see* Ex. D, West 30(b)(6) Dep. 59:1–13. DPSCS' designee testified that any forms or directives issued by headquarters (DOC or DPSCS) cannot be altered, even to enlarge them. Ex. E, Reid 30(b)(6) Dep. 201:13–202:7; *see* Ex. M, Gelsinger Dep. 108:11–109:18.

Defendants provide all sighted inmates at RCI and ECI with DPSCS's rules and programs in a standard print Inmate Handbook. Ex. E, Reid 30(b)(6) Dep. 107:12–18, 313:9–16. Except for an audio version of the 2017 RCI handbook, Inmate Handbooks have not been provided in accessible formats. *See id*. at 221:17–222:7; Ex. 20; Ex. D, West 30(b)(6) Dep. 73:17–74:19. Defendants expect Plaintiffs, like all inmates, to know the rules in the handbook; in prison, ignorance of the rules is not an excuse. Ex. N, Hershberger Dep. 118:1–20.

Defendants issue directives and institutional bulletins containing new policies that they expect inmates to know. Ex. M, Gelsinger Dep. 73:3–74:2. Defendants post these notices in standard print on bulletin boards inside the prisons for inmates to review. *Id*. at 105:19–106:6 (noting that she had never seen a bulletin board notice in large print). While former RCI Warden Denise Gelsinger claimed that it was the librarian and school principal's responsibility to provide those directives and bulletins in alternative formats to blind inmates, *id*. at 71:17–72:9, 74:9–75:20, the RCI principals who oversaw or currently oversee the library were not aware of the library providing alternative format directives, nor, in the case of the current principal, of being instructed to do so. Ex. O, Stanford Dep. 165:3–20; Ex. P, Jahnke Dep. 114:2–6, 114:17–115:4; *see* Ex. M, Gelsinger Dep. 76:8–12. Librarian Patricia Smart was never asked by her supervisors to create large-print versions of documents posted on the bulletin boards. Ex. Q, Smart Dep. 179:12–180:3. DPSCS even failed to provide the bulletin informing inmates of how to contact the DPSCS ADA Coordinator about disability-related issues in any format other than standard print. Ex. D, West 30(b)(6) Dep. 291:21–292:10, 293:17–294:6; Ex. B-102. Some DPSCS

witnesses testified that similar documents were sometimes read aloud on an inmate television broadcast that was played for only four days. Ex. C, Campbell 30(b)(6) Dep. 152:9–155:4; Ex. E, Reid 30(b)(6) Dep. 319:16–321:12.[1]

Defendants use only standard print forms for inmates to make various requests, including for medical attention and to order from the commissary. Ex. K, Baker Dep. 55:16–56:2, 60:8–10; Ex. J, Barnhart Dep. 35:17–36:4, 46:14–47:20; 49:6–50:5; Ex. L, Conrad Dep. 29:14–16, 31:8–11; Ex. M, Gelsinger Dep. 107:1–14, 110:13–111:9; Ex. D, West 30(b)(6) Dep. 64:19–65:9.

Inmates may participate in counseling or therapy programs, such as an anger management group, but Defendants provide participating inmates materials only in standard print. Ex. J, Barnhart Dep. 113:15–114:16; Ex. 74, DPSCS's Supp. Ans. to Holley Interrog. No. 14. Case manager Dwight Barnhart has never provided large print to a blind inmate, nor does he know how to go about doing so. Ex. J, Barnhart Dep. 80:9–81:4.

RCI maintains a wealth of print and electronic materials for sighted inmates in its library. The library has law books, a book of Maryland regulations, all public DPSCS directives, and more than 50 electronic legal databases on three legal computers, including LexisNexis. Ex. Q, Smart Dep. 56:10–57:16, 58:12–59:3. The library's legal documents, state law reference materials from Library Assistance for State Institutions, list of local and state agencies, and legal and court forms are all available only in standard print. *Id*. at 160:10–161:6, 174:2–175:16. The RCI library has "hundreds of forms" for various legal requests and documents. *Id*. at 52:8–17. Some, but not all, of the forms are available through LexisNexis electronically, with "very few" forms available in large print and none available in Braille. *Id*. at 53:1–21. As discussed below, LexisNexis is not provided on computers equipped with software for the blind.

In addition to legal materials, the RCI library offers a variety of magazine and newspaper subscriptions. *Id*. at 61:1–10, 166:21–167:9. It provides a "career computer" with limited internet access for job searches, information about available housing, and a program that assists with

[1] DPSCS has failed to produce records of any broadcast in which this bulletin was read and claims all tapes of the broadcasts themselves have been taped over and no longer exist. Ex. 21.

writing resumes. *Id*. at 63:15–19; Ex. 23. Information about jobs and housing across Maryland is available in the library on bulletin boards in print format. Ex. Q, Smart Dep. at 64:6–17.

Sighted inmates can use library computers for word processing, legal research, and touch-typing instruction, among other things. *Id*. at 106:1–16, 118:18–119:6, 121:4–20. Blind and low-vision inmates, who need screen access software to magnify or speak aloud the information on a computer screen, Ex. 19, Olivero Rpt. 18–19 (explaining use of screen reader software by the blind), cannot use, and thus cannot benefit from, the library's computers. Defendants claimed to have installed screen reader software on one computer before 2013, but that computer broke in 2016 and was never fixed. Ex. Q, Smart Dep. 22:5–9, 128:15–129:3, 185:6–21.

Even now, although RCI's library received three new computers for blind inmates in late December 2018 and installed Microsoft Word, a non-visual typing program, and a book reading program on them, *id.* at 121:21–122:17, 128:15–20; Ex. O, Stanford Dep. 134:18–135:16; Ex. M-96, at BROWN 3668, Plaintiffs cannot use them to complete forms or conduct legal research. The new computers do not offer electronic versions of the ARP or other forms. Ex. Q, Smart Dep. 132:3–8. Even if the forms were available, they would be of little use to blind inmates because the new computers are not connected to a printer, so blind inmates cannot print and submit any form they complete. *Id*. at 129:18–20. Unlike the computers for sighted inmates, the computers for the blind do not have access to any legal databases like LexisNexis. *Id.* at 131:3–132:5. Even if DPSCS had equipped these new computers with the appropriate resources and hardware, as of February 22, 2019, blind inmates could not use the computers because the library staff had not been trained on the software and could not instruct inmates on how to use it. *Id*. at 123:6–9, 129:11–17; Ex. O, Stanford Dep. 135:20–136:9, 137:5–138:20.

The library did not have a working scanner that could convert printed documents to audio output from at least January 2016 until December 2018, Ex. O, Stanford Dep. 35:20–36:3, 141:7–11, 143:21–144:17; *see also* Ex. Q, Smart Dep. 22:5–9, 177:2–3; Ex. M-96, at BROWN 3668. Although Ms. Stanford testified that a Kurzweil scanner (which converts text to speech for the blind) was installed in the special education classroom after she arrived (but stopped working

in 2018), there is no evidence that DPSCS staff were aware of it or that blind inmates were informed of it or permitted to use it. Ex. O, Stanford Dep. 142:8–143:20, 148:12–17.

RCI staff have computers on which they draft and receive electronic versions of documents. *See* Ex. K, Baker Dep. 49:18–50:14. The RCI library has a photocopier that can enlarge documents, but inmates must pay to use it, and it is inaccessible to the blind because the buttons are touchscreen and not marked for tactile identification. Ex. Q, Smart Dep. 130:20–131:2, 178:16–179:4. The only Braille materials in the library come from the Hadley School, which teaches Braille to blind individuals through a correspondence course. *Id*. at 185:3–5; Ex. R, Pittsnogle Dep. 50:18–51:20; Ex. O, Stanford Dep. 79:18–80:6.

At ECI, which houses some inmates with low vision, *see infra* Undisputed Facts Part V, the library has no magnification software for its library computers, nor does it offer a magnifier. Ex. D, West 30(b)(6) Dep. 28:18–29:11 (Mar. 7, 2019).

B. DPSCS Staff as Readers and Scribes for Blind Inmates.

Although there are disputes of fact regarding whether Defendants offer *any* alternate equally effective communication through the provision of staff as readers and scribes for blind inmates, it is undisputed that no staff are explicitly assigned to perform this task. The RCI Inmate Handbooks and DPSCS and DOC Directives make no mention of any staff position or inmate assignment to provide these services. Ex. E-94; Ex. G-102; Ex. D-124; Ex. I-3. DPSCS never informed Plaintiffs that any staff member was assigned to assist them with reading or writing. Ex. C, Campbell 30b6 Dep. 123:1–16; Ex. M, Gelsinger 166:17–168:9. The case management manual does not advise staff of this supposed obligation. Ex. K-33; *see* Ex. J, Barnhart Dep. 50:9–51:3 (agreeing that the case management manual "provide[s] the rules" that case managers "work under"). Pressed further, DPSCS admitted that it does not order case managers to read and write for blind inmates but simply tells them generally "to assist inmates as required or as requested." Ex. C, Campbell 30(b)(6) Dep. 121:18–122:16. Former RCI Warden Gregg Hershberger and former Commissioner Dayena Corcoran described staff assistance to blind inmates as voluntary. Ex. B, Corcoran Dep. 94:9–95:9; *see* Ex. N, Hershberger Dep. 88:3–9.

It is undisputed that staff are not consistently available to read and write for blind inmates when needed. Defendants' designee admitted that case managers' duty to write for blind inmates is "not all inclusive," that case managers will not write legal documents for inmates, that reading and writing for inmates is not in their job description or manual, and that they will do it only if they have time. Ex. E, Reid 30(b)(6) Dep. 196:10–197:15. Nor did the case managers who worked with Plaintiffs think they had a duty to read or write for them. Ex. K, Baker Dep. 62:12–15, 63:6–10, 64:3–21; Ex. J, Barnhart Dep. 60:1–11, 63:7–11, 65:5–66:4, 135:18–137:7, 142:12–144:1; Ex. S, Whittington Dep. 46:2–14, 52:14–54:9, 75:5–19; *see also* Ex. K, Baker Dep. 40:7–15 (stating that she could decline a request to meet with an inmate). No one is assigned to read and write personal mail for blind inmates. Ex. E, Reid 30(b)(6) Dep. 222:17–223:3; Ex. M, Gelsinger Dep. 169:19–170:21, 171:18–172:4. RCI Security Chief Todd Faith testified that, while correctional officers may read documents if requested, he would prefer that correctional officers not read medical or legal documents. Ex. I, Faith Dep. 262:21–265:17; *see* Ex. L, Conrad Dep. 24:18–25:3, 26:6–12, 28:14–19, 30:3–8 (testimony from correctional officer assigned to the blind tier that she was not required to assist with reading and writing for blind inmates). DPSCS admitted that the librarian is not required to read documents to blind inmates. *See* Ex. C, Campbell 30(b)(6) Dep. 168:5–7. Defendants' security expert, Commissioner of Correction Wayne Hill, explained that "staffing levels do not allow us that kind of latitude to have a staff person to read to an inmate, to write for an inmate. We just . . . can't accommodate that." Ex. T, Hill Dep. 83:3–9. He testified that employees should focus on security, and that there were no DPSCS staff that he thought "would be appropriate to do scribing or reading." *Id*. at 80:11–19, 82:4–20. He was concerned that staff members reading and writing for inmates "could breed an overfamiliarity with the inmate." *Id*. at 79:17–19, 80:4–10. DPSCS's witnesses simply did not know how blind inmates accomplished writing tasks. Ex. E, Reid 30(b)(6) Dep. 195:18–20; Ex. M, Gelsinger Dep. 169:19–173:5.

DPSCS identified the ARP coordinator as someone who should assist blind inmates with filling out ARPs. Ex. E, Reid 30(b)(6) Dep. 211:7–19. However, it is documented and

undisputed that the ARP coordinator denied Mr. Snead writing assistance. When Mr. Snead asked the ARP coordinator to write an ARP for him in late 2016, the coordinator explained why the ARP request was improper (which Mr. Snead disputed) and would not write it. Ex. G-110, at SNEAD 1196–99, 1202–05, 1207–08. Warden Miller responded by dismissing the ARP and telling Mr. Snead that it was his choice to pay inmates to write ARPs for him and that he should seek assistance from his case manager, tier officers, or the ARP coordinator, *id.* at SNEAD 1209—in other words, all of the people who had previously refused to assist him, *id.* at SNEAD 1204, 1207–08. Mr. Snead explained in an appeal:

> I told the Lieutenant that it is not the job of the ARP Coordinator to tell me what to ARP. I just need his help writing it right (again, I am blind and cannot write an ARP myself and need his help). I have asked other personnel for help and they said they did not know how to do it.

Id. at SNEAD 1204. Commissioner Corcoran denied the appeal, stating that the Warden had fully addressed the concern for future ARPs and that the previous ARPs that staff refused to write would not be reopened. *Id.* at SNEAD 1206. The ARP coordinator was not available—at least on a consistent basis—to help blind inmates fill out ARPs.

C. Inmate Assistants as Readers and Scribes.

Although it is disputed whether inmate walkers are responsible for reading and writing for blind inmates,[2] there is no dispute that inmate walkers are not required to have a GED or high school diploma, are not tested on their ability to read and write for inmates, and are provided no training in being a reader or scribe. Ex. E, Reid 30(b)(6) Dep. 215:18–216:21; Ex. E-94, at S BROWN 140–41. Even DPSCS's designee admitted that "it does sound a little off base there" for walkers to be expected to read and write for blind inmates without such qualifications. Ex. E,

[2] *Compare* Ex. E, Reid 30(b)(6) Dep. 194:2–7 (stating that reading and writing for blind inmates is part of walker duties), *with* Ex. 24, DPSCS ESI 4040 (stating that walkers "may" read and write for blind inmates), Ex. C, Campbell 30(b)(6) Dep. 121:11–14 (same), *and* Ex. U, Willey Dep. 67:10–70:18 (Neal Willey, a former walker for Russell Hopkins, testifying that reading and writing for blind inmates was in his discretion and that he was discouraged from helping them with ARPs).

Reid 30(b)(6) Dep. 216:16–21. Blind inmates are not consulted on which walker is assigned to them. Ex. K, Baker Dep. 147:20–148:3.

D. Blind Inmates Have No Effective Means to Request Reading and Scribe Services.

DPSCS's designees testified that while blind inmates are told as a general matter during orientation and in the handbook to seek assistance from staff, they are not told how to seek assistance with reading and writing. Ex. C, Campbell 30(b)(6) Dep. 123:1–16, 125:13–20; Ex. E, Reid 30(b)(6) Dep. 69:13–70:5, 120:7–121:18; Ex. D, West 30(b)(6) Dep. 53:9–54:20, 79:6–80:8. One DPSCS designee testified that she had no knowledge of how blind inmates learned who was responsible for reading and writing legal documents for them. Ex. E, Reid 30(b)(6) Dep. 198:3–6. Although Officer Conrad testified that she could choose to assist a blind inmate to read and write certain documents, she did not know how a blind inmate would know to ask her for such assistance. Ex. L, Conrad Dep. 26:13–18, 30:9–14, 31:18–32:6.

E. Effects of Defendants' Failure to Assign Readers and Scribes.

The DOC inmate handbook cautions inmates that to avoid sexual assault, they should "not accept gifts or favors from others" because most favors "come with strings attached." Ex. I-10, at 39–40; *see* Ex. I, Faith Dep. 125:21–126:18. Without qualified and trustworthy readers and scribes, Plaintiffs could not follow this advice, placing them at serious risk. Plaintiffs routinely had to pay other inmates for assistance with reading and writing. *See, e.g.*, Ex. V, Hammond Dep. 68:11–69:13; Ex. W, Snead Dep. 84:1–86:10.

When Gregory Hammond could not afford to pay another inmate to write a sick call slip for him during a flare up of his multiple sclerosis, he ended up unable to submit a sick call slip at all. Ex. V, Hammond Dep. 69:22–70:12. He asked an officer if he could see medical, but the officer told him he could not go without a request slip. *Id*. at 70:5–7. Mr. Hammond was unable to move his legs, urinated on himself, sat in his wet bed overnight, and could not visit medical until he got an officer's attention the next morning. *Id*. at 70:8–71:2. Mr. Hopkins, [redacted] had to obtain inmate assistance to fill out sick call slips. Ex. X, Hopkins Dep. 44:5–20. In several of his sick call slips, he requested a refill of [redacted] medication, [redacted], which other

inmates may have recognized. *See, e.g.*, Ex. 25, HOPKINS 516, 519, 521, 523, 526. Other inmates learned Plaintiffs' state ID numbers by filling out forms for them, making them vulnerable to misuse of their personal information. For example, armed with Mr. Brown's state ID number, other inmates were able to submit fake sick call slips for him for embarrassing ailments. Ex. 26, BROWN 643, 655, 709, 730, 1019, 1110. Mr. [redacted] had to rely on an inmate who went by the nickname [redacted] to read and write for him. [redacted] initially provided these services for free but eventually demanded that Mr [redacted] family send him money or, in the alternative, that Mr. [redacted] give him his PlayStation or television. When Mr. [redacted] refused, [redacted] choked him and twice forced him to perform oral sex. Ex [redacted] Dep. 42:10–48:19.

V. DPSCS Houses Blind Inmates at RCI and ECI.

A. Plaintiffs Are or Were Housed at RCI and ECI, Medium Security Facilities.

Defendants admit that RCI, a medium security facility, was and continues to be the designated DPSCS facility for blind inmates, regardless of their security classification. Ex. E, Reid 30(b)(6) Dep. 37:15–18; Ex. Y, Armstead Dep. 68:14–16; Ex. C, Campbell 30(b)(6) Dep. 29:16–17, 194:5–7, 414:18–20; Ex. K, Baker Dep. 103:21–104:14; Ex. M, Gelsinger Dep. 122:5–7; Ex. N, Hershberger Dep. 19:14–16. Although some inmates with visual impairments have been housed at ECI, once an inmate's visual impairment becomes severe enough, they are sent to RCI because ECI does not "have the accommodations that Roxbury Correctional Institution has" for the blind. Ex. D, West 30(b)(6) Dep. 60:7–61:5. As an ECI case manager admitted, an inmate's blindness is effectively a factor in his security classification because there are "only two institutions in the [S]tate of Maryland that our visually-impaired guys can go to, and they are both medium facilities . . . RCI and ECI." Ex. S, Whittington Dep. 33:20–34:7; *see* Ex. K, Baker Dep. 94:5–20. Thus, the security classification instrument might contain "a note in the comments that would say maybe something like, sight impaired, remain medium." Ex. S, Whittington Dep. 34:8–15.

With the exception of a few days spent at other facilities, all Plaintiffs have spent all or the majority of their incarceration at RCI, with some Plaintiffs (Mr. Hammond and Mr. Wilson) also housed at ECI for significant periods. *See* Ex. 27; Ex. 28; Ex. 29; Ex. 30; Ex. 31; Ex. 32, at 1676; Ex. 33, at 183; Ex. 12, at 1084–85; Ex. J-78, at POLLEY 420–21; Ex. 14; Ex. 34.[3] Plaintiffs Brown, James, Snead, and Wilson remain incarcerated at RCI. *See* Ex. 35; Ex. 12, at 1084–85; Ex. 14; Ex. D, West 30(b)(6) Dep. 44:8–20.

Security classification documents for Plaintiffs Brown, James, and Hopkins all contain notes of the type referenced by Ms. Whittington. Ex. J-77; Ex. J, Barnhart Dep. 171:20–172:5; Ex. G-Miller 107; Ex. K-36, at HOPKINS 127; Ex. K, Baker Dep. 99:7–103:7; *see also* Ex. K, Baker Dep. 102:12–103:15.[4] Mr. James remained at RCI even though he was classified minimum security. Ex. K-56, at JAMES 59; Ex. K, Baker Dep. 242:7–243:15.

On December 11, 2014, Ms. Baker emailed another staff member regarding Mr. Delano's potential reclassification to minimum security. Ex. K-41; Ex. K, Baker Dep. 114:17–116:6. She explained that "Delano is eligible for minimum security reclass, but we are hesitant with his vision status." Ex. K-41. She asked for documentation regarding whether he is considered blind or "has enough vision to be transferred to a minimum facility." *Id.* She wanted to ensure that if he was sent away from RCI that he would be "medically cleared to be out of a 'blind' institution." *Id.* Although there is no response to this email in the record, on November 25, 2015, the case management recommendation to reclassify Mr. Delano as pre-release security, but to "remain [at] RCI due to visual impairment," was disapproved by "Headquarters," which decided he should "remain medium security." Ex. K-40, at DELANO 233.

[3] Defendants transferred Mr. Wilson to several minimum security facilities in 2017, but he did not remain at any for longer than two months before being transferred to ECI. Ex. 15, at 3082–84.

[4] Although Mr. Hopkins was eventually offered a pre-release security placement in July 2017, he elected to remain at RCI after Ms. Baker informed him that he would not have any job opportunities at a pre-release facility because it lacked accommodations. Ex. X, Hopkins Dep. 151:5–20. He had finally received the blind greeter job in the kitchen at RCI, which earned him 10 days of diminution credits per month, and he did not want to lose the opportunity to hold a 10-credit job. Ex. X, Hopkins Dep. 149:4–18.

Mr. Polley was classified as minimum security in December 2015; nevertheless, he was sent to RCI. Ex. J-78, at POLLEY 419–21; Ex. J, Barnhart Dep. 181:11–183:16.

Although Mr. Holley was always classified as medium security during his time at RCI, a 2010 security classification document shows that the box for "minimum" was originally checked under "recommended security level" but later changed to "medium," and the word "BLIND" is handwritten at the top of the form. *See* Ex. 36, HOLLEY 273–74. This supports Mr. Holley's statement that his case manager said he would have been classified as minimum security but for his blindness. Ex. 37, Holley Interrog. Ans. No. 5.

While Defendants transferred Mr. Wilson to minimum security facilities after his security level was reclassified in 2016, none was able to accommodate Mr. Wilson's medical order for a single cell to accommodate his blindness. *See* Ex. 6. His security reclassification form from August 2017 recommended that he be transferred to a medium security facility because he had been removed from three different minimum security facilities "due to his fear for his safety and/or refusal of housing. He is partially blind and . . . appears as if he is uneasy in the dorm settings." Ex. 38, at 3280. In February 2019, DPSCS's security classification instrument indicated that Mr. Wilson's security classification should be decreased, but the recommendation was overridden, with the notes "Remain Medium Security" and "Per AW West and Acting Commissioner Hill, Wilson is to be transferred to RCI due to his vision impairment." Ex. 39, at 3274. Mr. Wilson was transferred from ECI to RCI because staff believed that his vision had worsened. Ex. D, West 30(b)(6) Dep. 275:2–279:16.

B. Other Facilities Offer Programs Not Available at RCI or ECI.

Patuxent Institution is DPSCS's "hub" for inmate treatment services. Ex. Z, Shaffer Dep. 33:13–19. Among the many programs Patuxent houses are the Parole Violators Program ("PVP") and the Eligible Persons ("EP") Program. The PVP "is a six-month cognitive behavioral therapeutic program" for those who have violated their parole. *Id*. at 28:1–3. For six months, inmates in the PVP participate in weekly therapy groups aimed to help them prepare for

reintegration back into their community. *Id*. at 28:4–9. Inmates must be housed at Patuxent to participate in the PVP. *Id*. at 53:5–11. There is no waitlist for the program and in recent years, there have been open spots. *Id*. at 55:4–9.

Following Mr. Delano's parole violation, the Parole Commission recommended Mr. Delano for the PVP, and DPSCS was "sure he met the eligibility" criteria. Ex. Y, Armstead 30(b)(6) Dep. 68:2–3, 69:16–19. Mr. Delano spent only a month at Patuxent and then was transferred to RCI before he could join the PVP. *Id*. at 78:3–18. In November 2018, DPSCS claimed that Mr. Delano had not been enrolled in the PVP because he was not a "priority candidate" because his parole had been revoked. Ex. 40, DPSCS's Ans. Delano Interrog. No. 5 (Nov. 13, 2018). On February 5, 2019, however, Erin Shaffer, the Associate Director of Behavioral Sciences at Patuxent who oversees the PVP, testified that inmates are eligible for the PVP regardless of whether their parole has been violated or revoked and that she had no idea what being a "priority candidate" meant. Ex. Z, Shaffer Dep. 21:9–20, 58:14–59:20, 240:1–14. The next day, DPSCS revised its interrogatory answers to provide a different rationale for not allowing Mr. Delano to participate in the program: that Mr. Delano was transferred out of Patuxent because he felt threatened by another inmate. Ex. 41, DPSCS's Supp. Ans. Delano Interrog. No. 2 (Feb. 6, 2019).

This belated rationale is belied by Defendants' own evidence. DPSCS's records show that DPSCS staff were first made aware that an inmate may have threatened Mr. Delano at Patuxent on February 15, 2018. Ex. Y-161, at DELANO 776; Ex. Y, Armstead Dep. 109:7–112:17. In a February 15 email, a sergeant at Patuxent suggested that Mr. Delano might be placed on medical segregation to avoid the risk. Ex. Y-161, at DELANO 776. Despite this recommendation, Mr. Delano was not transferred to medical segregation until March 10, 2018. Ex. Y, Armstead 30(b)(6) Dep. 120:4–7. A medical record from March 9 recommended this transfer following note of his blindness, without mentioning any threat, Ex. 42. DPSCS admits that this was an unusual delay to segregate an inmate for safety. Ex. Y, Armstead 30(b)(6) Dep. 120:8–13. In the intervening time, on February 26, 2018, medical recommended a transfer based

on Mr. Delano's vision. *Id*. at 120:15–9. Seven minutes after medical sent an email on February 26 noting that Mr. Delano was legally blind and recommending he be transferred to a facility that could accommodate him, case management director Dill emailed case manager Allen and asked her to complete Mr. Delano's classification as soon as possible to expedite his transfer. Ex. Y-161, at DELANO 778; Ex. Y, Armstead 30(b)(6) Dep. 122:1–15. On March 5, Ms. Allen responded that she had completed the classification. Ex. Y-161, at DELANO 778; Ex. Y, Armstead 30(b)(6) Dep. 122:10–13. That same day, Mr. Delano requested accommodations for his blindness. Ex. Y, Armstead 30(b)(6) Dep. 120:20–121:2; Ex. 43. Instead of providing them, DPSCS moved Mr. Delano to medical segregation on March 10 and transferred him to RCI just four days later. Ex. Y, Armstead 30(b)(6) Dep. 121:3–6.

The EP program is a longer-term cognitive behavioral treatment program that lasts about six to seven years for inmates with certain mental health needs, such as substance abuse issues or personality disorders. Ex. Z, Shaffer Dep. 27:1–9, 36:7–13. Inmates can be evaluated for the program by directly requesting consideration in writing or having a case manager at a different facility or a judge refer them. *Id*. at 38:9–39:8. Once an inmate's name is added to the referral list, his name is not removed until he is transferred to Patuxent for evaluation. *Id*. at 166:19-167:7. To be eligible for evaluation for the EP program, inmates must have at least three years remaining on their sentences. *Id*. at 39:19–40:6. Although the program takes six to seven years to complete, some inmates with fewer than six years remaining on their sentences participate. *Id*. at 41:4–9. The goal of the EP program is to reduce recidivism and, for inmates not being released in the near future, ensure better adjustment to incarceration. *Id*. at 46:10–20.

Mr. Snead was referred to the EP program in 2009 and again in 2012. Exs. Z-63, 64; Ex. Z, Shaffer Dep. 145:11–148:4, 149:21–150:13.[5] Ten years after his first referral, Mr. Snead

[5] At the time of Dr. Shaffer's deposition, Plaintiffs had received a version of the 2009 referral form that had not been signed by an official from Patuxent, leading Dr. Shaffer to believe it had never been received by Patuxent. Ex. Z, Shaffer Dep. 145:11–148:4. After the deposition, Defendants sent Plaintiffs a version of this 2009 referral with a signature from a Patuxent official, indicating receipt. Ex. 44.

remains at RCI. Dr. Shaffer testified that a primary reason an inmate might be skipped over on the waitlist is if they have a recent infraction. *Id*. at 154:15–155:14. Mr. Snead's most recent infraction was in November 2002. *See* Ex. 45, at 580. Similarly, Mr. Delano was placed on the referral list for the EP program in 2007 but was never sent to Patuxent for evaluation. Ex. Z-67; Ex. Z, Shaffer Dep. 163:8–164:8. Mr. Delano had no infractions between September 2008 and April 2010, between April 2010 and September 2014, or between March 2015 and his initial release in January 2017. Ex. 46. The court that sentenced Mr. Brown in April 2008 recommended Patuxent, but more than ten years later, with no infractions since March 2010, Mr. Brown remains at RCI. *See* Ex. 47, at BROWN 111; Ex. 48.

In November 2013, a commissioner or hearing officer noted that Mr. Delano "needs SAT [substance abuse treatment] but due to blindness he can only go to certain institutions like RCI—but they don't have SAT classes currently." Ex. EE-116 [Moyer Dep.].

VI. The Inmate Escort, or "Walker," Program.

Defendants' own policies forbid it from placing one inmate in a position of power, authority, or control over another. *E.g.*, Ex. I-7, at BROWN 2249; Ex. K-33, at BROWN 2077; Ex. G, Miller Dep. 64:5–10; Ex. C, Campbell 30(b)(6) Dep. 399:7–21; Ex. M, Gelsinger Dep. 83:19–84:15. Yet, Defendants assign sighted inmates as escorts, or "walkers," for blind inmates. Ex. 74, DPSCS's Supp. Ans. Delano Interrog. No. 8 (Mar. 13, 2019). The walker program has existed since at least 2012. Ex. E, Reid 30(b)(6) Dep. 213:9–18. Walkers are required to escort the blind inmate to any passes (*e.g.*, medical, educational, or other appointments) and assist the blind inmate during an emergency evacuation. Ex. 24. Walkers "may assist the visually impaired inmate with any written correspondence." *Id.* Defendants assigned each Plaintiff a walker during their time at RCI. Ex. 74, Supp. Resps. Delano Interrog. Nos. 9, 14 & Supp. Resp. to James First Req. Nos. 17–19 (Mar. 13, 2019). There is no agreement within DPSCS about whether blind inmates must use a walker, and correctional staff have required walkers to follow their assigned blind inmate when the inmate refuses a walker. Ex. 50; Ex. A, Franklin Dep. 36:15–18.

Inmate escort is a "preferred" job, the criteria for which are that the inmate be housed at RCI and off disciplinary segregation a certain number of days. Ex. E-94, at S BROWN 140–141; Ex. E, Reid 30(b)(6) Dep. 214:13–215:17. Sex offenders were permitted to be walkers until 2018. Ex. E, Reid 30(b)(6) Dep. 214:18–215:3; *see* Ex. E-5, at BROWN 3101–02; Ex. E-94, at S BROWN 140–41. Defendants choose the inmates who serve as escorts without input from blind inmates. Ex. K, Baker Dep. 147:20–148:3. While the former lieutenant for the housing unit containing the tier for blind inmates claimed to instruct his tier officers how to train walkers, Ex. A, Franklin Dep. 40:6–41:17, the former tier officer for the blind tier denied any such training existed, Ex. L, Conrad 20:4–6, as did Defendant's designee, Ex. E, Reid Dep. 223:14–224:12, and a former walker, Ex. U, Willey Dep. 50:3–15. The training, if it exists, is not informed by those with expertise in working with blind people: Defendants' employees purportedly tell walkers to have the blind inmate put his hand on the walker's shoulder, Ex. A, Franklin Dep. 41:1–4, a generally ineffective method of sighted guidance for the blind when navigating up and down steps or in any environments requiring quick reaction time. Ex. 51, Bullis Rpt. 7. Blind inmates have complained that their walkers are "unavailable, unwilling, or late" in performing their duties. Ex. L, Conrad Dep. 22:14–20; *see also* Ex. E, Reid 30(b)(6) Dep. 228:20–229:3.

Mr. Hammond was double-celled with his walker, [redacted], who "force[d] [him] to refuse to go to appointments" and physically assaulted him. Ex. V, Hammond 16:8–18:18. After Defendants fired him, Mr. [redacted] blamed Mr. Hammond for losing his job and attacked him. Ex. 52; Ex. 74, Supp. Resp. Delano Interrog. No. 14 (Mar. 13, 2019).

VII. Plaintiffs' Celling Arrangements

DPSCS has denied disability-based reasonable modifications for some Plaintiffs' celling arrangements by housing them with a cellmate ("double celling") in violation of medical orders that they be housed alone ("single celled"). Around March 7, 2016, Mr. Hammond was double celled. *See* Ex. 53; Ex. 54, at HAMMOND 1277. Although Mr. Hammond received a permanent single cell order from the medical contractor on March 7, 2016, DPSCS ignored the order. Ex. 55, HAMMOND 1537. On May 24, 2016, Mr. Hammond reported that he had been "assaulted

by my cell buddy, he was angry at me that he lost his escort priviledges [sic] with me and is blaming me. He was fired for it because he left me out in the rain, he punched me several times in the stomach over the last two day[s].” Ex. 52, at HAMMOND 1325. Mr. Hammond was single celled briefly and then assigned a new cellmate. Ex. V, Hammond Dep. 20:3–21:1.

On January 6, 2015, medical staff entered a permanent single cell order for Mr. Delano. Ex. 56. This order was placed in his base file. Nevertheless, when Mr. Delano was reincarcerated in October 2017, Defendants placed him in a double cell in contravention of his single cell order, where he remained until his release around December 20, 2017. Ex. 8, at DELANO 774. Defendants again double celled Mr. Delano following a parole violation on February 2, 2018. *Id.* at DELANO 773. Upon his transfer to RCI on March 14, 2018, he was again double celled. *Id.* (Mr. Delano was placed in cell 14 of Housing Unit 1, A tier); *see* Ex. C, Campbell 30(b)(6) Dep. 182:2–21 (cells 1 through 9 are single cells). Although he received a new medical order for a single cell on June 29, 2018, Ex. 57, Mr. Delano was not moved to a single cell until August 17, 2018. Ex. 8, at DELANO 773 (placed in cell 8, a single cell).

Medical ordered a single cell for Mr. Brown on December 20, 2007. Ex. 58. On November 24, 2014, Mr. Brown was told that he would be double celled because RCI did not have a record of his vision impairment. Ex. 59. In fact, RCI possessed a lengthy medical record establishing Mr. Brown as a blind inmate—indeed, on November 11, 2014, his medical record notes a “[p]revious history” of “single cell housing [due to] legally blind status.” Ex. 60, at BROWN 1022. Mr. Brown was double celled on December 3, 2014. Ex. 7. He received a renewed single cell order on January 6, 2015, Ex. 61 , at which time he was moved to a single cell, Ex. 7 (placed in cell 9 of Housing Unit 1, A tier, a single cell).

Mr. Wilson received a single cell order on October 31, 2014. Ex. 6. Mr. Wilson was placed in a double cell at RCI on September 20, 2015, where he remained until he was transferred to a different facility on March 29, 2017. Ex. 15, at WILSON 3084–86 (placed in cell 10 of Housing Unit 1, A tier, a double cell). Mr. Wilson subsequently spent several months in minimum security facilities that were not equipped to house inmates who needed single cells

because of their disabilities. Ex. 15, at WILSON 3082–84; Ex. 38, at WILSON 3280; Ex. B, Corcoran Dep. 233:20–234:7.

Mr. Polley requested a single cell in March 2016, via both a letter his mother sent to the IGO and verbal request of his tier officer. Ex. 62, at POLLEY 220–22; Ex. L, Conrad Dep. 70:19–71:7. The IGO denied his request for failure to exhaust the ARP process, and his tier officer denied his request because she thought that no single cell was available. Ex. 61, at 223–24; Ex. L, Conrad Dep. 71:11–72:3. No one referred Mr. Polley for a medical evaluation. RCI's ADA Coordinator "didn't think it was a good idea" to house Mr. Polley with a sighted cellmate, but no action was taken. Ex. 63; *see* Ex. 13.

VIII. Denial of High-Value Jobs at RCI

Kitchen (or "dietary" or "food service") assignments allow inmates at RCI to earn 10 credits off their sentences ("diminution credits") per month, which can significantly reduce the length of a sentence. Ex. E, Reid 30(b)(6) Dep. 236:15–237:14. Other jobs, such as sanitation and laundry, earn only 5 credits a month. Ex. 64. Until 2016, RCI refused to allow blind inmates to work in the kitchen.

Mr. Delano was placed in dietary on February 18, 2015, Ex. 65, at DELANO 1986, but removed less than a month later, Ex. AA-149, at DELANO 240–41; Ex. AA, Schenck Dep. 163:16–164:11. Lt. Gerald Landis wrote, "To have a blind inmate, such as Delano, performing the various work required to sustain the operation of the kitchen puts at risk the safety of Delano and those who work around him." Ex. AA-149, at DELANO 241. Lt. Landis wrote that there was "no position which a blind inmate" could perform in dietary. *Id.* at DELANO 240. Lt. Landis had never observed Mr. Delano's work in dietary. Ex. AA, Schenck Dep. 168:20–169:2. Jon Schenck, RCI's dietary manager, had previously observed Mr. Delano work in the kitchen and found his work acceptable. *Id*. at 120:10–121:9.

Defendants assigned Plaintiff Russell Hopkins to dietary on November 6, 2015. Ex. 66. After working one day in dietary, Mr. Hopkins was fired for supposed safety reasons. Ex. X, Hopkins Dep. 64:20–65:7; Ex. AA, Schenck Dep. 129:17–130:2. According to Mr. Schenck, Mr.

Hopkins had been assigned to the kitchen by accident because case management did not "send us the blind guys like that" unless they had specifically requested them for the "blind greeter" position that was subsequently created in 2016. Ex. AA, Schenck Dep. 129:7–16. In November, Lt. Dean Trovinger noted that Mr. Hopkins "is blind and we really don't have a safe job to give him." Ex. 67. Mr. Hopkins's case worker, Ms. Baker, asked if there were other jobs he could perform because "[w]e are struggling with having a 10 day job for [the vision impaired inmates]," but Lt. Trovinger replied that the kitchen was closed to Mr. Hopkins for "his own safety." *Id.* Mr. Schenck admitted that at the time he removed Mr. Hopkins from the kitchen, he did not know the extent of Mr. Hopkin's blindness or blindness skills, he did not evaluate Mr. Hopkins' skills, and he did not consider him for any other position in dietary. Ex. AA, Schenck Dep. 130:6–8, 131:19–21, 132:1–4, 177:9–178:5.

In 2016, Defendants created the "blind greeter" position within dietary, which is reserved for a blind inmate. *Id*. at 117:18–118:13, 119:4–120:4. The blind greeter's sole job is to greet correctional officers as they enter the officers' dining room and request that the officers sign a clipboard. *Id.* After numerous requests from Mr. Delano and Mr. Hopkins to be reassigned to the kitchen, Defendants placed Mr. Delano in the blind greeter position on February 25, 2016, and Mr. Hopkins in the blind greeter job in July 2017. Ex. 68; Ex. 65; Ex. AA-151, at R HOPKINS 332–42; Ex. AA-149, at W DELANO 65, DELANO 563, W DELANO 67–68, 74. Mr. Schenck admitted that positions had opened up in the kitchen between the time Mr. Delano requested to be reassigned to the kitchen and his assignment to the blind greeter position, but Mr. Delano was not considered for those jobs. Ex. AA, Schenck Dep. 176:18–177:4.

In October 2016, Plaintiff Steven Brown requested the blind greeter position that would be available once Mr. Delano left RCI, and he was placed on the wait list. Ex. 58, at S BROWN 60, 62. After learning that another blind inmate had received the open greeter position, Mr. Brown sent another request asking for any available kitchen job, noting that he had not had the chance to work a 10-credit per month job in his more than nine years at RCI. Ex. 58, at S BROWN 61. Although DPSCS's designee testified that the average wait time for an inmate on

the food service job wait list is about three months, Ex. E, Reid 30(b)(6) Dep. 263:17–265:7, Mr. Brown remained on the food service wait list for nearly two years, until he was assigned to the greeter position on October 5, 2018. Ex. 69.

Plaintiffs Snead, Polley, James, and Holley all attempted or requested to work in the kitchen but were rejected because of their blindness. Ex. W, Snead Dep. 130:13–131:15; Ex. BB, Polley Dep. 43:6–45:22; Ex. CC, James Dep. 96:16–98:1; Ex. DD, Holley Dep. 49:7–51:21. No evidence in the record contradicts their accounts. DPSCS claims that after this case was filed in 2016, the kitchen began considering blind inmates for limited kitchen duties, such as sanitation. Ex. E, Reid 30(b)(6) Dep. 269:7–272:12.

APPLICABLE LAW

Section 504 prohibits discrimination on the basis of disability by recipients of federal financial assistance. 29 U.S.C. § 794. Title II's nondiscrimination obligations are "consistent with" Section 504's requirements and apply to all state and local government entities. 42 U.S.C. § 12134(b); *see also* 42 U.S.C. § 12201(a). "Claims under the ADA's Title II and the Rehabilitation Act can be combined for analytical purposes because the analysis is substantially the same." *Seremeth v. Bd. of Cty. Comm'rs*, 673 F.3d 333, 336 n.1 (4th Cir. 2012) (citation omitted). Plaintiffs establish a prima facie case under Title II or Section 504 when they show that they: "(1) have a disability; (2) they are otherwise qualified to receive the benefits of a public service, program, or activity; and (3) they were denied the benefits of such service, program, or activity, or otherwise discriminated against, on the basis of their disability." *Nat'l Fed'n of the Blind v. Lamone*, 813 F.3d 494, 502–03 (4th Cir. 2016).

The broad definitions of discrimination under Title II and Section 504 prohibit DPSCS from, among other things, denying Plaintiffs an equal opportunity or limiting their opportunity to participate in or benefit from a service afforded others and utilizing criteria or methods of administration that discriminate on the basis of disability or that screen people out on the basis of their disability. 42 U.S.C. § 12132; 29 C.F.R. § 794; 28 C.F.R. § 35.130(b); 28 C.F.R. § 42.503.

The regulations also require public entities to take affirmative steps to ensure persons with disabilities have equal access to services, programs, and activities, including by making "reasonable modifications in policies, practices, or procedures" when necessary, 28 C.F.R. § 35.130(b)(7), and taking "appropriate steps to ensure that communications with [persons] with disabilities are as effective as communications with others." 28 C.F.R. § 35.160(a). Failure to provide reasonable modifications is discrimination on the basis of disability. 28 C.F.R. § 35.130(b)(7); *Adams v. Montgomery Coll. (Rockville)*, 834 F. Supp. 2d 386, 393 (D. Md. 2011) (citing *A Helping Hand, LLC v. Baltimore Cty.*, 515 F.3d 356, 362 (4th Cir. 2008)); *Estate of Robert Ethan Saylor v. Regal Cinemas, Inc.*, No. CV WMN-13-3089, 2016 WL 4721254, at *18 (D. Md. Sept. 9, 2016), *aff'd sub nom. Estate of Saylor v. Rochford*, 698 F. App'x 72 (4th Cir. 2017) (quoting 28 C.F.R § 35.130(b)(7)).

The Department of Justice has noted the applicability of these general and specific obligations in the "correctional setting," including that prisons are forbidden from:

> - Using eligibility criteria that screen out or tend to screen out people with disabilities, 28 C.F.R. § 35.130(b)(8), such as . . . requiring inmates who participate in a jobs or trustee program to be able to see . . . .
>
> - Failing to provide auxiliary aids and services necessary to achieve effective communication with individuals with disabilities, 28 C.F.R. §§ 35.160-164, such as refusing to provide written materials in large print for an inmate with low vision to participate in a GED program or failing to procure a sign language interpreter for a deaf inmate to participate in a "scared straight" program. . . .

United States' Memorandum of Law as Amicus Curiae on Issues Under the Americans with Disabilities Act and Rehabilitation Act that are Likely to Arise on Summary Judgment or at Trial 7, *Miller v. Smith*, No. 6:98-CV-109-JEG (S.D. Ga. 2010), https://www.ada.gov/briefs/miller_amicus.doc (hereinafter "*Miller* Br.") ("Ultimately, these provisions work together to prohibit all disability discrimination in all of the programs, services, and activities of public entities. In the correctional context, where the public entity has custody

of an individual with a disability, such prohibitions also include failing to provide critical healthcare and personal services . . . ."). *See* 28 C.F.R. § 35.152 & app. A

The Title II regulation thus prohibits prisons from treating inmates with disabilities worse than inmates without disabilities and requires prisons to take affirmative steps to ensure inmates with disabilities can take equal advantage of all the available activities of the prison and to ensure communications with inmates with disabilities are equally effective. In addition, the Department of Justice

> emphasize[s] that detention and correctional facilities are unique facilities under title II. Inmates cannot leave the facilities and must have their needs met by the corrections system, including needs relating to a disability. If the detention and correctional facilities fail to accommodate prisoners with disabilities, these individuals have little recourse, particularly when the need is great . . . .

38 C.F.R. Pt. 35, App. A at 653 (discussing 28 C.F.R. § 35.152). Just as in the Eighth Amendment context, prisons have an affirmative duty to provide for inmates' needs beyond the government's ordinary obligations because "society takes from prisoners the means to provide for their own needs," *Brown v. Plata*, 563 U.S. 493, 510 (2011); *see Farmer v. Brennan*, 511 U.S. 825, 833 (1994) (recognizing that incarceration "strip[s] [inmates] of virtually every means of self-protection and foreclose[s] their access to outside aid"), prisons may have greater responsibility than other Title II entities to ensure the equal access of prisoners with disabilities. *See, e.g., Pierce v. District of Columbia*, 128 F.Supp.3d 250, 271–72 (D.D.C. 2015) ("[T]his Court holds that prison officials have an affirmative duty to assess the potential accommodation needs of inmates with known disabilities who are taken into custody and to provide the accommodations that are necessary for those inmates to access the prison's programs and services, without regard to whether or not the disabled individual has made a specific request for accommodation and without relying solely on the assumptions of prison officials regarding that individual's needs.").

ARGUMENT

I. Plaintiffs Meet the Threshold Requirements to Sustain Their Claims on Summary Judgment Under the ADA and Section 504.

A. DPSCS is a Public Entity Subject to Title II of the ADA and a Recipient of Federal Financial Assistance Subject to Section 504.

Title II applies to all types of public entities, including prisons. 42 U.S.C. § 12131; *see* 28 C.F.R. § 35.130(a); *Pa. Dep't of Corrs. v. Yeskey*, 524 U.S. 206, 290–10 (1998) (holding that "[s]tate prisons fall squarely within the statutory definition of 'public entity.'"). DPSCS admits, as it must, that it is a public entity within the meaning of Title II. Ex. 70, DPSCS Obj. & Resp. Brown Req. for Admis. 1 ("Resp. Brown RFA"). Title II, therefore, applies to all its programs, services, and activities.

Section 504 applies to "any program or activity receiving Federal financial assistance." 29 U.S.C. § 794(a). Section 504 covers "all the operations of a department, agency, special purpose district, or other instrumentality of a State or of a local government" that receives federal financial assistance. *Id.* § 794(b). DPSCS admits that it receives federal financial assistance. Ex. 70, Resp. Brown RFA 2. Therefore, DPSCS and all its operations are subject to Section 504's nondiscrimination requirements.

B. Title II and Section 504 Prohibit the Discriminatory Actions That Are the Subject of Plaintiffs' Complaint.

Plaintiffs allege that they have experienced discrimination in several of DPSCS's services, programs, and activities, including "[t]he Inmate Handbook and orientation materials, administrative grievance process, Defendants' facilitation of communication between inmates and the courts, the library, the work programs, the educational programs, the building facilities, the institutional mail system, and inmate housing." ECF No. 20 ¶ 106. Title II and Section 504 apply to each of these contexts as a matter of law.

Title II prohibits public entities from excluding qualified individuals with disabilities from or denying them the benefits of the public entity's "services, programs, or activities." 42 U.S.C. § 12132; 28 C.F.R. § 35.130(a). Services, programs, and activities include virtually

everything a public entity does. *See Lamone*, 813 F.3d at 503 (observing that "Title II is disjunctive" and broadly applies to all of a public entity's "services, programs, or activities").

Section 504's reach is similarly broad, reaching discrimination in "all of the operations of" any "program or activity" that accepts federal funds and defining "program or activity" to include state agencies. 29 U.S.C. § 794(b). Thus, DPSCS itself, its Division of Corrections, RCI and ECI, and all their operations are covered by Section 504.

Plaintiffs' allegations cover activities, such as housing, orientation, jobs, mail, grievance systems, and procedures for safely navigating facilities, that courts regularly hold are covered by Title II and Section 504. This Court, for example, has allowed prisoners to proceed on ADA and Section 504 claims alleging discrimination in housing, jobs, and access to opportunities to earn credits off their sentences. *Jardina v. DPSCS*, No. 16-1255, 2018 WL 6621518, at *8 (D. Md. 2018); *Muhammad v. Kaloroumakis*, No. 14–1794, 2015 WL 1712594 (D. Md. 2015).[6] The activities that are the subjects of Plaintiffs' claims are subject to Title II and Section 504.

Although Defendants provide some of their programs through arrangements with third-party entities, including DLLR, this does not absolve them of their obligations. Public entities are prohibited from discriminating "through contractual, licensing, or other arrangements." 28 C.F.R. § 35.130(b)(1). In addition, regarding DLLR programs at DPSCS facilities, "[a] public entity may not, directly or through contractual or other arrangements, utilize criteria or methods of administration . . . (iii) That perpetuate the discrimination of another public entity if both public entities are subject to common administrative control or are agencies of the same State." *See also Castle v. Eurofresh, Inc.*, 731 F.3d 901, 910 (9th Cir. 2013) (prison responsible for

[6] Other Courts have also allowed inmates to proceed with challenges to a prison's mobility assistance services, *Wright v. New York State Dep't of Corrs.*, 831 F.3d 64, 73 (2d Cir. 2016); access to housing and jobs, *Perez v. Arnone*, 2015 WL 12979148 at *5 (D. Conn. 2015); *Henderson v. Thomas*, 913 F. Supp. 2d 1267, 1309–10 (M.D. Ala. 2012); grievance system, orientation, educational programs, counseling programs, vocational programs, law library, and disciplinary proceedings, *Pierce*, 128 F. Supp. 3d at 256–63; *Holmes v. Godinez*, 311 F.R.D. 177, 227 (N.D. Ill. 2015); *Clarkson v. Coughlin*, 898 F. Supp. 1019, 1045–48 (S.D.N.Y. 1995); and recreational, dining, visitation, substance abuse, church, transition, library, and commissary programs, *Love v. Westville Corr. Ctr.*, 103 F.3d 558, 559 (7th Cir. 1996).

actions of its inmate employment contractor); *Armstrong v. Schwarzenegger*, 622 F.3d 1058, 1065–67 (9th Cir. 2010) (state prisons responsible for actions of county jails housing state prisoners); *Henrietta D. v. Bloomberg*, 331 F.3d 261, 286 (2d Cir. 2003). Therefore, Defendants are responsible, and liable, for the discriminatory actions, inactions, and eligibility criteria of DLLR, DPSCS contractors, and other third-party providers of DPSCS programs.

C. DPSCS Has Failed to Comply with the Procedural Requirements of the ADA.

The ADA does not permit public entities such as DPSCS to simply assume their standard procedures will result in compliance. It requires them to review those procedures for compliance, change them as necessary, appoint responsible staff, and notify participants with disabilities about their rights and how to address them. *See Chisholm v. McManimon*, 275 F.3d 315, 331–31 (3d Cir. 2001) ("The provision of such services must include some reasonable means of determining when they will be needed.").

Title II, since 1992, has required public entities with 50 or more employees, such as DPSCS, DOC, and DPSCS facilities to

> designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to it alleging its noncompliance with this part or alleging any actions that would be prohibited by [the ADA]. The public entity shall make available to all interested individuals the name, office address, and telephone number of the employee or employees designated pursuant to this paragraph.

28 C.F.R. § 35.107. The designated employee is commonly referred to as the "ADA Coordinator." Until 2017, DPSCS, DOC, and RCI did not designate an ADA Coordinator for inmates.

Title II also requires public entities, "within one year of the effective date of this part, [to] evaluate [their] current services, policies, and practices, and the effects thereof, that do not or may not meet the requirements of this part and, to the extent modification of any such services, policies, and practices is required, the public entity shall proceed to make the necessary modifications." 28 C.F.R. § 35.105(a). While DPSCS has evaluated the physical accessibility of

its facilities, no record evidence indicates that such an evaluation was conducted regarding its services, policies, and practices.

Finally, the ADA requires DPSCS to "make available" to disabled inmates information about the ADA and its "applicability" to DPSCS "and make such information available to them in such manner as the head of the entity finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part." 28 C.F.R. § 35.106. DPSCS provides no notice to inmates of any process to request a reasonable modification or auxiliary aid or to challenge its denial. Consequently, DPSCS, including RCI, the "designated blind facility," has no system for meeting their ADA responsibilities.

D. Plaintiffs are Individuals with Disabilities Protected by the ADA and Section 504.

Under the ADA and Section 504, a disability is "a physical or mental impairment that substantially limits one or more major life activities," "a record of such an impairment"; or being "regarded as having such an impairment." 42 U.S.C. § 12102(1); 29 U.S.C. § 705(2)(B); *Class v. Towson Univ.*, 806 F.3d 236, 245 (4th Cir. 2015). The ADA Amendments Act ("ADAAA"), enacted in 2008, "provides that the term 'disability' must be 'construed in favor of broad coverage of individuals under [the ADA], to the maximum extent permitted by [the ADA].'" *Class*, 806 F.3d at 245 (quoting 42 U.S.C. § 12102(4)(A)). The ADAAA also amended Section 504. (Pub. L. 110-325 (S 3406), § 7).

The Title II regulation defines major life activities to include "seeing, . . . reading, . . . writing, communicating, [and] interacting with others." 28 C.F.R. § 35.108(c)(1)(i); *see also id.* § 42.540(k)(ii). The ADA regulations applying the ADAAA provide that "it should easily be concluded that" certain impairments "will, at a minimum, substantially limit the major life activities indicated." *Id.* § 35.108(d)(2)(iii). Among these predictably assessable impairments is "blindness substantially limits seeing." *Id.* § 35.108(d)(2)(iii)(B). "'Substantially limits' is not meant to be a demanding standard." *Id.* § 35.108(d)(1)(i). A substantial limitation does not occur only when a person's impairment prevents them from engaging in a major life activity, *id.* §

35.108(d)(1)(v), but also when the impairment substantially limits the condition, manner, or duration in which he or she can engage in the activity, in comparison to most members of the general population, *id.* § 35.108(d)(3). This analysis "usually will not require scientific, medical, or statistical evidence," *id.* § 35.108(d)(1)(vii), and "may include, among other things, consideration of the difficulty, effort or time required to perform a major life activity; pain experienced when performing a major life activity; the length of time a major life activity can be performed; or the way an impairment affects the operation of a major bodily function," *id.* § 35.108(d)(3)(ii).[7]

Blindness as it is understood in the common parlance, as being "sightless," Merriam-Webster, Collegiate Dictionary 132 (11th ed. 2003), clearly substantially limits the major life activity of seeing. ADA and Section 504 protection, though, is not limited to individuals who are completely blind. Rather, anyone whose vision impairment substantially limits the major life activity of seeing is protected. *Enyart v. Nat'l. Conf. of Bar Examiners*, 823 F. Supp. 2d 995, 1014 (N.D. Cal. 2011); *Eldredge v. City of St. Paul,* 809 F. Supp. 2d 1011, 1029–30 (D. Minn. 2011). In addition, individuals with vision only in one eye are protected if their monocular vision affects their ability to see, read, or perform other major life activities. As the Supreme Court has stated, even before the ADAAA, individuals "with monocular vision 'ordinarily' will meet the [ADA's] definition of disability" and "monocularity inevitably leads to some loss of horizontal field of vision and depth perception." *Albertson's Inc. v. Kirkingburg*, 527 U.S. 555, 566–67 (1999); *see also Fahey v. Twin City Fan Cos., Ltd.*, 994 F. Supp. 2d 1064, 1071 (D.S.D. 2014); *Allen v. Carrington*, No. 07-797, 2009 WL 2877557, at *5 (D.S.C. 2009); *Coleman v. S. Pac. Transp. Co.*, 997 F. Supp. 1197 (D. Ariz. 1998).

[7] "An individual has a record of such an impairment if the individual has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities." 28 C.F.R. § 35.108(e)(1). A person may have a record of a substantially limiting impairment even if the person "was misclassified as having had such an impairment." *Id.* § 35.108(e)(2).

Therefore, there is no genuine dispute of material fact that Plaintiffs have, or have a record of having, a disability. Defendants' own medical professional has identified all Plaintiffs as being blind or low vision. *See supra* Undisputed Facts Part I. In addition, Defendants, throughout each Plaintiff's incarceration, assigned each Plaintiff a sighted inmate escort, *see supra* Undisputed Facts Part VI, and housed each of them on the blind tier when at RCI, *see supra* Undisputed Facts Part I. Plaintiffs are entitled to summary judgment on their status as individuals with disabilities under the ADA and Section 504.

II. Defendants DPSCS and Moyer Violate Plaintiffs' Rights Under the ADA and Section 504.

A. Defendants Fail to Ensure Equally Effective Communication with Plaintiffs.

Blind prisoners have the right to equally effective communication with DPSCS and within its programs, services, and activities. Public entities ensure equally effective communication for people with disabilities by furnishing appropriate auxiliary aids and services. 28 C.F.R. § 35.160(b)(1). In doing so, a public entity must give "primary consideration" to the auxiliary aid(s) or service(s) desired by the individual with a disability. *Id.* § 35.160(b)(2). Auxiliary aids and services include, but are not limited to, "qualified readers; taped texts; audio recordings; Brailled materials and displays; screen reader software; magnification software; optical readers; secondary auditory programs (SAP); large print materials; accessible electronic and information technology; or other effective methods of making visually delivered materials available to individuals who are blind or have low vision." *Id.* § 35.104. To be effective, auxiliary aids or services "must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability." *Id.* § 35.160(b)(2). Thus, auxiliary aids and services that require blind inmates to rely on others are not effective when reasonable alternatives exist that would allow for private and independent communication. *California Council of the Blind v. County of Alameda*, 985 F. Supp. 2d 1229, 1239–40 (N.D. Cal. 2013).

As described *supra* Undisputed Facts Part IV.A, DPSCS expects prisoners, including blind prisoners, to use print documents to access DPSCS's programs, services, and activities, and DPSCS offers a host of informational resources to inmates either only in standard print formats or electronically through computers with no assistive technology for the blind. Defendant also provides mail services to which inmates have a right, both under DPSCS policy, Ex. I-7, at BROWN 2250, and the Constitution, *Hudson v. Palmer*, 468 U.S. 517, 547 (1984). Plaintiffs, like other inmates, need to read and write both personal and legal mail, as well as legal documents like court filings. Because Defendants provide Plaintiffs with no means to access written materials or write documents with the independence, privacy, and effectiveness enjoyed by sighted inmates, Defendants fail in their obligation to ensure equally effective communication with Plaintiffs.

1. DPSCS Does Not Assign Qualified Readers and Scribes to Blind Inmates.

Although Plaintiffs dispute that any staff were available to assist them to read and write, it is undisputed that DPSCS does not assign Plaintiffs qualified readers or scribes who are required to help them access the array of inaccessible documents in prison. Ultimately, while DPSCS's designees suggested that various personnel were at the blind inmates' disposal for assistance reading and writing, the record plainly shows that no one was assigned to act as a reader or scribe for Plaintiffs and employees who Defendant identified as responsible for helping blind inmates denied knowledge of that responsibility.

Even if DPSCS had designated certain individuals to read and write for blind inmates, this option was never communicated to Plaintiffs, putting DPSCS in violation of the ADA. *Clarkson v. Coughlin*, 898 F. Supp. 1019, 1038 (S.D.N.Y. 1995) ("28 C.F.R. § 35.163 provides that 'a public entity shall ensure that interested persons . . . can obtain information as to the existence and location of accessible services, activities, and facilities.'"). At times, in response to Plaintiffs' ARPs, DPSCS identified people *ad hoc* who could supposedly assist with reading and writing. Ex. G-110, at SNEAD 1209; Ex. 71. But no specific instructions were given to blind inmates about how to obtain such assistance proactively or as a matter of course. *See supra*

Undisputed Facts Part IV.B. DPSCS's haphazard response to individual grievances did not meet its effective communication obligations. *Clarkson*, 898 F. Supp. at 1032–33.

2. Any Readers or Scribes Provided by DPSCS Were Not Qualified.

To be "qualified," a reader must be "able to read effectively, accurately, and impartially using any necessary specialized vocabulary." 28 C.F.R. § 35.104. Moreover, "[i]n order to be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability." 28 C.F.R. § 35.160(b)(2). Even if Defendants made staff or certain inmates available to assist Plaintiffs with reading and writing, the evidence establishes that they were not qualified.

In situations involving complaints of staff misconduct, staff members are not sufficiently "impartial" to provide qualified assistance. Ex. C, Campbell 30(b)(6) Dep. 122:17–21; Ex. E, Reid 30(b)(6) Dep. 70:11–17. The evidence also shows that staff were not willing to set aside their own opinions and scribe what blind inmates wanted to say. In Mr. Snead's case, for example, the ARP coordinator refused to write an ARP for Mr. Snead because the coordinator disagreed with Mr. Snead on the merits. Ex. XX-106, at SNEAD 1399–1402. Staff testified that they would not be comfortable reading or writing certain documents for blind inmates. Ex. S, Whittington Dep. 52:14–54:9; *see supra* Undisputed Facts Part IV.B.

Inmate walkers are also not qualified to act as readers or scribes. DPSCS does not require inmate walkers to have a GED or high school diploma. Even DPSCS's designee admitted that it "sound[ed] a little off base there" for walkers to be expected to read and write for blind inmates under these circumstances. Ex. E, Reid 30(b)(6) Dep. 216:16–21. DPSCS does not test walkers' ability to read and write for inmates, or provide them any training in being a reader or scribe. Ex. E, Reid 30(b)(6) Dep. 217:20–218:3, 223:14–17. Nor does this option give inmates an impartial channel through which to complain about their walkers. Most alarmingly, it forces inmates to disclose confidential information to other inmates—about their families, their medical needs, their legal situations, and other matters—at risk to their safety and against DPSCS policy. *See*

supra Part Undisputed Facts Part IV.E; Ex. XX-33, at BROWN 2077. Walkers are therefore not qualified readers or scribes.

3. Defendants Fail to Give Primary Consideration to Plaintiffs' Requests for Specific Auxiliary Aids and Services.

DPSCS does not give "primary consideration" to the auxiliary aids or services desired by Plaintiffs. 28 C.F.R. § 35.160(b)(2). Primary consideration means "[t]he state or local government must honor the person's choice, unless it can demonstrate that another equally effective means of communication is available, or that the use of the means chosen would result in a fundamental alteration or in an undue burden." Dep't of Justice, Effective Communication 6 (2014), https://www.ada.gov/effective-comm.pdf. DPSCS admits that it has no standard process for evaluating an inmate's request for auxiliary aids or services; rather, "[i]t is . . . up to the management style and investigative style of . . . the assistant warden or whoever else is handling the investigation." Ex. C, Campbell 30(b)(6) Dep. 140:5–8. The legal requirement to give primary consideration to the Plaintiffs' requests is not articulated within DPSCS's processes. It is undisputed that blind inmates were not consulted about what auxiliary aids or services they needed or the qualifications (or even identity) of any reader or walker. Ex. K, Baker Dep. 147:20–148:3. Plaintiffs certainly should have been given primary consideration as to how they would read and write personal letters, complaints, or sensitive court filings and their requests for independent, private, and effective auxiliary aids, such as assistive technology, magnifiers, and large print, should have been honored.

4. Numerous Auxiliary Aids Were Available That Would Have Afforded Plaintiffs Equally Effective Communication.

Plaintiffs' poor access to written communications was not an unavoidable consequence of their blindness. It was a result of Defendants' failure to provide appropriate and necessary auxiliary aids that would have enabled Plaintiffs to access documents privately and independently. Even accepting, *arguendo*, that DPSCS relies on readers and scribes, exclusive resort to this method of communication does not meet the requirements of impartiality, timeliness, privacy, or independence. Other available auxiliary aids include:

a. Large Print

Large print materials are specifically listed as an auxiliary aid in the Title II regulation. 28 C.F.R. § 35.104. Large print is also the simplest auxiliary aid to provide and is effective for individuals with low vision. Despite the obvious need for DPSCS to provide its documents, forms, rules, and directives in large print, and the ease of doing so, DPSCS did not. There is a copy machine in the RCI library that can make copies in large print. Ex. Q, Smart Dep. 131:20–132:10. Any document created in a word processing program can easily be made large print by changing the font size. DPSCS and RCI staff simply did not make large print materials available to low vision inmates. *See supra* Undisputed Facts Part IV.A.

b. Assistive Technology

DPSCS does not dispute Plaintiffs' expert Rachel Olivero[8] regarding the diverse array of technology and basic tools offering blind individuals the ability to read and write independently, from screen-reading software that converts information presented visually on a computer screen into speech or Braille using refreshable Braille displays, to scanners that convert printed text to speech, to handheld magnifiers that enlarge text, to slates and styluses that allow blind users to write notes in Braille. Ex. 19, Olivero Rpt. 8–21. DPSCS offers no explanation for its failure, even as of February 2019, to provide functioning auxiliary aids that would allow blind inmates to write independently. As described *supra* Part IV.A, some aids it has purchased to convert text to speech have been left inoperative for long periods of time; others were procured only recently and presently are unusable. Perhaps most critically, blind inmates cannot do any independent legal research, because LexisNexis is not installed on the computer with screen-reading or magnification software, and no one at RCI knows how to use that software, in any case.

Forms like ARPs and sick call slips could be—but still are not—provided as fillable electronic forms that blind inmates could complete independently at a computer or with any

[8] After Ms. Olivero submitted her report, she passed away unexpectedly. Thereafter, with the consent of Defendants, Plaintiffs engaged Amy Mason as an expert, and Ms. Mason has adopted the opinions expressed in Ms. Olivero's report as her own. *See* Ex. 72, Supp. Mason Rep. 2.

electronic device with a keyboard. Ex. 19, Olivero Rpt. 20–21. Defendants' security expert, Commissioner Hill, knew that other states provide inmates with tablets through which they can submit commissary orders and sick-call slips electronically. Ex. T, Hill Dep. 76:15–77:6. Mr. Hill had no security concerns with allowing inmates access to tablets with intranet-only connections in supervised settings where the tablet is secured at the end of the inmate's use. Ex. T, Hill Dep. 78:16–79:8. In fact, a tablet pilot program is underway within DPSCS, although Mr. Hill did not know if DPSCS procured tablets that were accessible for the blind or whether there were plans to allow inmates to use the tablets for form submission. Ex. T, Hill Dep. 71:8–72:4, 75:16–76:4.

Plaintiffs could access the news provided in the library to the same extent sighted inmates do, through approved newspapers and magazines, through services like NFB-Newsline, a free service that provides audio access to newspapers and magazines by telephone or on a computer, where it can be downloaded for offline access. Ex. 19, Olivero Rpt. 27. Defendants have not disputed Plaintiffs' security expert's opinion that the security risk associated with Newsline is no different from the security risk associated with access to television news or print magazines and newspapers. Ex. 73, Subia Rebuttal & Supp. Rpt. 10. Although certain magazines have been prohibited from RCI because of "contraband information," approved newspapers and periodicals are not reviewed on a daily basis—they are spot checked. Ex. C, Campbell 30(b)(6) Dep. 332:19–333:17. The same could be done for publications offered through Newsline. Inmates also have access to television channels—at least about a dozen—including news broadcasts. Ex. N, Hershberger Dep. 133:2–9. DPSCS does not restrict channels or preview what is being broadcast. Ex. N, Hershberger Dep. 133:2–21; *see* Faith Dep. 305:4–9. There is no reason Plaintiffs could not have equally effective access to the news available in the library.

5. Defendants' Failure to Provide Effective Communication Placed Plaintiffs at Risk and Caused Them Harm.

Defendants' failure to ensure Plaintiffs had reliable assistance with reading and writing resulted in ineffective communication and placed Plaintiffs them at great risk of extortion, sexual

assault, and violence. Without accessible documents or qualified and trustworthy scribes or readers, Plaintiffs often went without access to those documents altogether. For example, lack of access to a qualified scribe resulted in Mr. Hammond being unable to submit a sick call request during a multiple sclerosis flare-up, going without medical treatment overnight, urinating on himself, and lying immobile in his wet bed all night. *See supra* Undisputed Facts Part IV.E.

In the absence of other options, Plaintiffs were forced to rely on other inmates to help them read or write. This forced reliance on other inmates placed them in danger. RCI's former security chief Todd Faith agreed that "nothing in jail is free, so it's really not a gift, they're going to expect some type of payment." Ex. I, Faith Dep. 126:16-18. The DPSCS Inmate Handbook also advises inmates to "choose [their] associates wisely" to avoid sexual assault. Ex. I-10, at 39–40. Blind inmates are not able to choose their associates at all, let alone wisely, as DPSCS cautions, because DPSCS forces them to rely on whoever will help them read and write.

Mr. [redacted] reliance on what seemed to be a generous offer of assistance reinforced the handbook's warning, making him the victim of extortion and sexual assault from a volunteer inmate "assistant." *See supra* Undisputed Facts Part IV.E.

Forced reliance on other inmates to access documents also required Plaintiffs to reveal highly sensitive information to other inmates. For example, Mr. [redacted] was forced to reveal his HIV status and other Plaintiffs had to reveal their state ID numbers to inmates who misused them. *See supra* Undisputed Facts Part IV.E.

Plaintiffs' attempts to access required prison forms and to communicate with their attorneys and loved ones outside of prison comes at a price not paid by sighted inmates and that is not equally effective.

B. Defendants Deny Plaintiffs an Equal Opportunity to Be Housed in Lesser Security Settings and to Access the Programs and Services Offered Only at DPSCS Facilities Other than RCI.

In addition to their general obligations not to discriminate against inmates on the basis of disability, 28 C.F.R. § 35.130, correctional facilities are forbidden to "place inmates . . . with

disabilities in inappropriate security classifications because no accessible cells or beds are available"; "place inmates or detainees with disabilities in facilities that do not offer the same programs as the facilities where they would otherwise be housed"; or "deprive inmates or detainees with disabilities of visitation with family members by placing them in distant facilities where they would not otherwise be housed," *id.* § 35.152(b)(2)(i),(iii), (iv). By segregating blind prisoners at RCI regardless of their security classification, programmatic needs, or county of residence, DPSCS has violated each of these prohibitions.

As outlined *supra* Undisputed Facts Part V, Mr. Delano, Mr. Hopkins, Mr. James, Mr. Polley, and Mr. Wilson were each housed at RCI despite qualifying for minimum security status, and Mr. Holley retained a medium security classification solely because of his blindness. These Plaintiffs were kept at RCI solely because they were blind. *See* Ex. N, Hershberger Dep. 38:14–39:8 (explaining that normally, a minimum security inmate would only be housed at RCI temporarily, while he waited for a bed at a minimum security facility or if there were a security issue). DPSCS was unable to accommodate Mr. Wilson's need to be single celled at any of its minimum security facilities and eventually transferred him back to RCI once it believed that his vision had deteriorated. *See supra* Undisputed Facts Part V. This violated DPSCS's obligation to make accessible cells available at every security setting. *See Miller* Br., *supra*, at 7.

DPSCS's segregation of blind inmates to RCI is not inconsequential. DPSCS concedes that an inmate's security classification "[a]bsolutely" matters. Ex. C, Campbell 30(b)(6) Dep. 411:6–8. Minimum security and pre-release facilities offer benefits to inmates not otherwise available at medium security facilities. Higher security levels mean that inmates "are under greater scrutiny" by staff. Ex. C, Campbell Dep. 411:17–20. "Decreasing in security means that you that you have reached a point somewhere in your incarceration where we need to, in preparation of your release, provide you the opportunity to fail or succeed in self-monitoring." Ex. C, Campbell 30(b)(6) Dep. 412:1–5. Inmates are not locked into their cells in minimum security; they "have the ability to move about a little bit more in a bigger area" and need not wait for a guard to unlock a door. Ex. E, Reid 30(b)(6) Dep. 27:9–28:11. Lesser security thus comes

with "more privileges, more opportunities of time to yourself where you're not constantly being monitored." Ex. C, Campbell 30(b)(6) Dep. 412:6–8. DPSCS believes that inmates are more likely to be successful upon release from prison if they have had a decrease in security level, such that they are slowly released back into the community through opportunities to "self-monitor and self-police." Ex. C, Campbell 30(b)(6) Dep. 414:9–17.

DPSCS offers specialized programming at other facilities that Plaintiffs cannot access from RCI, including the PVP and EP Program at Patuxent. Although DPSCS purports to have denied Mr. Delano participation in the Patuxent program for non-discriminatory reasons, where a witness's deposition testimony "is blatantly contradicted by the record, so that no reasonable [trier of fact] could believe it," an alleged factual dispute created by the testimony need not be credited and "will not defeat an otherwise properly supported motion for summary judgment." *Scott v. Harris*, 550 U.S. 372, 380 (2007) (internal quotation marks and citation omitted); *see also Hodges v. Fed.-Mogul Corp.*, 621 F. App'x 735, 741 (4th Cir. 2015) (unpublished). That is the case here. As discussed *supra* Undisputed Facts Part V, the only reasonable conclusion from the timeline of events and Defendants' shifting explanations is that Defendants' purported reasons for barring Mr. Delano from Patuxent are pretextual. Had DPSCS transferred Mr. Delano because of a security threat, it would not have waited a month to do so. Because of his blindness, DPSCS excluded Mr. Delano from the benefits of the PVP. *See* Ex. Y, Armstead 30(b)(6) Dep. 72:10–73:3 (describing benefits of PVP to participating inmates). DPSCS's policy or practice of segregating blind prisoners at RCI also potentially prevented Mr. Snead, and Mr. Brown from participating in Patuxent's EP Program.

DPSCS's segregation of blind inmates at RCI prevents these inmates from accessing needed treatment programming, such as the SAT classes Mr. Delano was found to need in 2013, but which he never received. *See supra* Undisputed Facts Part V.B. Accordingly, Defendants violated the ADA and Section 504 by segregating blind prisoners to RCI, regardless of their security classification or programmatic needs. *See* 28 C.F.R. § 35.152(b)(2)(i),(iii), (iv).

C. Defendants' Use of Inmate Escorts Fails to Provide Blind Inmates an Equal Opportunity to Navigate Defendants' Facilities.

Forcing Plaintiffs to rely on untrained, unvetted, and at times abusive sighted inmates to navigate Defendants' facilities violates the ADA. Although Defendants view the walker program as an accommodation, Miller Dep. 278:18–279:5, it does not provide Plaintiffs effective access to Defendants' facilities. "The hallmark of a reasonable accommodation is effectiveness." *Wright*, 831 F.3d at 72 (citation omitted). Providing limited or intermittent access is not effective. *Id.* at 73; *see, e.g.*, *Randolph v. Rodgers*, 170 F.3d 850, 858 (8th Cir. 1999).

Defendants have fallen well short of providing an auxiliary aid or service that offers Plaintiffs effective access to Defendants' facilities. Requiring Plaintiffs to rely upon the cooperation of other inmates is ineffective. *Wright*, 831 F.3d at 74; *see Am. Council of the Blind v. Paulson*, 525 F.3d 1256, 1269 (D.C. Cir. 2008) (holding that, under Section 504, a blind person's access to a public benefit should not be "contingent upon the cooperation of third persons"). Plaintiffs' access to Defendants' facilities is contingent upon walkers' willingness or competence to perform their duties, and walkers are not always so obliging or able. Ex. L, Conrad Dep. 22:14–20; Ex. 74, Supp. Resp. Delano Interrog. No. 14 (Mar. 13, 2019). When no walker is available to escort them, Plaintiffs have been stuck. *See, e.g.*, Ex. 75.

Defendants' walker program also exposes Plaintiffs to a serious risk of abuse that sighted inmates need not accept to move about Defendants' facilities. Defendants' own policies forbid placing one inmate in a position of power, authority, or control over another. Ex. I-7, at BROWN 2249; Ex. K-33, at BROWN 2077; Ex. G, Miller Dep. 64:5–10; Ex. C, Campbell 30(b)(6) Dep. 399:7–21; Ex. M, Gelsinger Dep. 83:19–84:15. This policy exists because such a dynamic "could create violence, extortion. It leads to creating affiliations amongst people and an organization that would be contrary to a sound security within the facility." Ex. G, Miller Dep. 64:11–16; *accord* Ex. C, Campbell 30(b)(6) Dep. 399:15–19. Former RCI Warden Miller agreed that part of the purpose of the policy is "to avoid having inmates made more vulnerable to the inmate who's in charge of them." Ex. G, Miller Dep. 64:17–21. The walker program places

inmates in just such a position of control and authority over Plaintiffs. Moreover, from the beginning of the walker program until two years after Plaintiffs filed suits, Defendants allowed sex offenders to serve as walkers, which Defendants' employees admit exposed Plaintiffs to a serious risk of harm and manipulation. Ex. M, Gelsinger Dep. 158:10–159:8.

Defendants have created a program that deters Plaintiffs from accessing prison services and forces Plaintiffs to depend upon the goodwill of other inmates. *See Wright*, 831 F.3d at 74. Also as in *Wright*, Defendants have prevented Plaintiffs from using their preferred accommodation, whether an inmate of their choice, a staff member, or the acquisition of independent travel skills, to avoid dependence on inmates Defendants choose. *Id.* at 76; *see Armstrong v. Brown*, 732 F.3d 955, 960 (9th Cir. 2013) ("[F]orc[ing] disabled class members into the vulnerable position of being dependent on other inmates to enable them to obtain basic services, such as meals, mail, showers, and toilets" violates the ADA.).

Defendants could have chosen auxiliary aids and services that would have afforded Plaintiffs an equal opportunity to navigate their facilities safely. Plaintiffs' expert on blindness skills, Michael Bullis,[9] has explained that with proper training, a blind inmate could travel independently throughout RCI given its simple layout. Ex. 51, Bullis Rpt. 6. Defendants considered providing such training in late 2015 but decided against it because of cost. Ex. G, Miller Dep. 100:4–109:3. Defendants could have assigned a staff member to escort Plaintiffs around the facility. Ex. I, Faith Dep. 266:8–14 (RCI's security chief expressing no security concerns with such an arrangement). Instead, Defendants opted to offer Plaintiffs only a dangerous and ineffective aid for navigating RCI, in violation of its own policies.

D. As a Matter of Law, Defendant DPSCS Denied Plaintiffs Reasonable Modifications When It Disregarded Their Single Cell Orders and/or Failed to Timely Respond to a Request for an Evaluation for Single Celling.

Defendants denied Plaintiffs Hammond, Delano, Wilson, and Brown equal access to safe housing and violated their rights to reasonable modifications when it disregarded their single cell

[9] Defendants have offered no expert testimony to rebut Mr. Bullis's opinions on blindness skills.

orders and failed to timely respond to Mr. Brown's request to be evaluated for a single cell. Because there is no dispute that these Plaintiffs, who had medical orders for single cells, required a single cell as a modification for their blindness, Plaintiffs are entitled to summary judgment.

Plaintiffs, like all inmates in the custody of DPSCS, are qualified to benefit from DPSCS's housing program and to be housed safely.

By DPSCS's own standards, as ordered by its own medical contractor, single celling Mr. Hammond, Mr. Delano, Mr. Wilson, and Mr. Brown was reasonable and necessary to ensure their access to safe housing. DPSCS's designees testified that the medical contractor was authorized to decide who should be single celled as a disability modification and that this decision should not be overridden by non-medical staff. Ex. C, Campbell 30(b)(6) Dep. 184:9–185:10;[10] Ex. E, Reid 30(b)(6) Dep. 333:2–14; *see also* Ex. M, Gelsinger Dep. 182:14–183:2 (single celling is "a clinical decision for the most part"); Ex. G, Miller Dep. 146:3–147:6. RCI's own medical providers and administrators concluded that blind inmates should be housed in single cells in order to ensure their safety because of their disabilities. *See* Ex. 76; Ex. G, Miller Dep. 284:11–285:8; Ex. C, Campbell 30(b)(6) Dep. 194:2–12. But "headquarters"—that is, DOC—began double celling blind inmates in or around 2016, regardless of medical orders and in the face of RCI's chief of security, Todd Faith's concern that "we are going in a unsafe direction with ADA and PREA laws if this isn't corrected soon." Ex. 76, at DPSCS ESI 82.

The DOC's decision to reduce the number of single cells available on the blind tier was divorced from any consideration of the need to ensure blind inmates' equal access to safe housing. As DPSCS designee testified, "beds with headquarters is a Tetris game. So if – single cells to them are single cells. They don't know that it's for a good reason or a valid reason. . . . They want bed space. . . . So if they said no, no, no, we need these cells to be labeled double cells, they -- they don't always listen to, well, wait a minute, we can't make that a double cell because we needed single for this reason." Ex. E, Reid 30(b)(6) Dep. 331:9–21. The decision to

[10] On rare occasions custody staff determined that an inmate who was double celled needed to be single celled. Ex. C, Campbell 30(b)(6) Dep. 184:9–185:10.

double cell was not "inmate-specific," but "across-the-board . . . on single cells in general." Ex. G, Miller Dep. 281:19–282:1. As the former Commissioner of Correction testified, blind inmates should be double celled "[w]hen we have a crunch for housing." Ex. B, Corcoran Dep. 217:1–3.

As described *supra* Undisputed Facts Part VII, DPSCS double celled Mr. Hammond in spite of his medical order for single celling and in spite of his assault by his cellmate. DPSCS double celled Mr. Delano for most of six months in spite of a permanent single cell order. Mr. Wilson had a single cell order as of at least October 31, 2014, that, too, was disregarded. Mr. Brown was told, falsely, that RCI had no record of his blindness, and his request for a renewed medical evaluation prior to being double celled was ignored in spite of the institution's recognition of his long-running history of single celling because of his disability. DPSCS's decisions to double cell blind inmates in violation of medical orders and DPSCS's own policy due to broad, non-individualized concerns about a "crunch for housing" violated Plaintiffs Hammond, Delano, Wilson, and Brown's right to a reasonable modification under the ADA.

E. Defendants Denied Plaintiffs Opportunities to Build Job Skills, Earn More Time Off Their Sentences, and Increase Their Wages.

Courts throughout the country have held that Title II and Section 504 apply to claims of exclusion from prison work programs. *See Yeskey*, 524 U.S. at 210 (holding that prison vocational programs are among the many prison programs, activities, and services covered under Title II of the ADA); *Castle*, 731 F.3d at 910 (concluding that state prison defendants could be held liable under Title II and Section 504 for contractor's alleged failure to accommodate prisoner's disability in prison job); *Harrington v. Vadlamudi*, No. 9:13-cv-795 BKS/RFT, 2015 WL 4460994, at *3 (N.D.N.Y. July 21, 2015) (holding that prisoner established *prima facie* case under Title II and Section 504 based on his denial of prison job because of his disability); *Kogut v. Ashe*, 592 F. Supp. 2d 204, 208 (D. Mass. 2008) (holding that an inmate "may not under Title II of the ADA be barred, based on discrimination arising from his disability, from work programs that may have the *effect* of reducing his sentence" (emphasis in original)); *Sites v. McKenzie*, 423 F. Supp. 1190, 1197 (N.D.W. Va. 1976) (holding that plaintiff could challenge

his exclusion from prison's vocational program under Section 504). Although inmates have no freestanding right to a specific job or the opportunity to earn time off their sentences, they cannot be denied such an opportunity for which they would otherwise be eligible but for their disability. *Kogut*, 592 F. Supp. 2d at 208; *see Muhammad*, 2015 WL 1712594, at *4 (stating that the plaintiff's "allegation that the prison denied him a job because he is blind demonstrates a potential ADA violation."); *see also Henderson*, 913 F. Supp. 2d at 1285 (holding that plaintiffs may challenge "the fact that they are entirely barred from consideration because they have [disabilities]").

As outlined *supra* Undisputed Facts Part VIII, until at least 2016, Defendants denied blind and low-vision inmates access to kitchen assignments based on stereotyped assumptions that such work was unsafe. Ex. E, Reid 30(b)(6) Dep. 269:7–270:14; Ex. 77. Defendants' assumptions were divorced from any individualized evaluation of the Plaintiffs and from any consideration of auxiliary aids or services or modifications that could allow blind inmates to hold kitchen jobs. *See* Ex. AA, Schenck Dep. 130:6–8, 131:10–21, 132:1–4, 168:20–169:2, 177:9–178:5. Plaintiffs' expert has offered uncontradicted testimony that blind people can safely work in commercial kitchens. Ex. 51, Bullis Rpt. 9. A 10-credit job in the kitchen for the past six years—the period covered by the statute of limitations—is worth 360 more diminution credits than the 5-credit jobs available to Plaintiffs. Defendants' actions violated Plaintiffs Hopkins, Delano, Brown, Snead, Holley, Polley, and James's ADA and Section 504 rights.

III. Defendants Acted Deliberately.

Plaintiffs may claim compensatory damages under the ADA and Section 504 in cases of intentional discrimination or when the defendant acts with deliberate indifference. *Adams*, 834 F. Supp. 2d at 393–94; *Paulone v. City of Frederick*, 787 F. Supp. 2d 360, 373–74 (D. Md. 2011). "[I]ntentional discrimination is treated as synonymous with discrimination resulting in disparate treatment" and does not require a showing of discriminatory animus. *Pandazides v. Virginia Bd. of Educ.*, 13 F.3d 823, 830 n.9 (4th Cir. 1994) (citation omitted).

The requirements to provide notice to inmates, update processes, and appoint responsible personnel are plain from the text of the regulations, 28 C.F.R. §§ 35.105–107. Yet, DPSCS ignored even those basic requirements. Defendants' decision to segregate blind inmates at RCI, excluding them from lesser security facilities and specialized programs offered elsewhere, and its refusal to employ blind inmates in the kitchen is textbook intentional discrimination.

Defendants have further shown deliberate indifference to Plaintiffs' need for auxiliary aids and services and reasonable modifications because "[t]hey had notice of the potential risk of their decision, and clearly refused the accommodation knowingly." *Proctor v. Prince George's Hosp. Ctr.*, 32 F. Supp. 2d 820, 829 (D. Md. 1998) (quoting *Bartlett v. New York State Bd. of Law Exam'rs*, 970 F. Supp. 1094, 1151 (S.D.N.Y. 1997) (Sotomayor, J.)); *see Adams*, 834 F. Supp. 2d at 394; *Paulone*, 787 F. Supp. 2d at 374. "[C]ompensatory damages are available for failure to accommodate a plaintiff if defendants 'acted knowingly, voluntarily, and deliberately,' even if the violations resulted from mere 'thoughtlessness and indifference' rather than because of any intent to deny Plaintiff's rights." *Adams*, 834 F. Supp. 2d at 394 (quoting *Proctor*, 32 F. Supp. 2d at 828)).

Defendants' myriad failures to accommodate Plaintiffs were done knowingly and with disregard of the risk of their actions. A defendant who has a reasonable modifications policy and knows that a person has a disability that may require accommodation, yet does not supply modifications, is deliberately indifferent. *See Paulone*, 787 F. Supp. 2d at 388. Defendants know that their facilities must comply with the ADA and Section 504, and their employees are familiar with the rights of inmates with disabilities under those laws. Ex.I-2; Ex.I-3; *see, e.g.*, Ex. M, Gelsinger Dep. 95:3–21; Ex. G, Miller Dep. 82:8–17, 141:12–17, 198:16–199:7. Defendants' policies include specific direction on supplying reasonable modifications and auxiliary aids. *E.g.*, Ex. I-3, at BROWN 2285–86; Ex. K-34, at BROWN 2773. DPSCS's designee testified that it is the responsibility of everyone within the agency to provide reasonable modifications and remove barriers for inmates with disabilities. Ex. E, Reid (30)(b)(6) Dep. 75:3–16. Defendants also knew that Plaintiffs were blind or visually impaired. *See supra* Undisputed Facts Part I, VI (Plaintiffs

were housed on the blind tier and assigned inmate escorts). Defendants' failure to supply reasonable modifications and auxiliary aids and services was therefore deliberately indifferent.

Moreover, Defendants have known since at least 2012 that blind inmates required assistive technology to read and write, when an administrative law judge ruled that "[f]ailing to make reasonable accommodations for [Sedric Holley] to have access to Braille lessons and reading material, books on tape or any other assistive technology in the only DOC institution designated for housing blind inmates violates the . . . ADA." Ex. I-17, at S HOLLEY 10. While Mr. Holley complained specifically about the library, a request for auxiliary aids and services in one context puts a Title II entity on notice that they may be needed in other contexts, as well. *Pierce*, 128 F. Supp. 3d at 275.[11] In response to the administrative law judge's decision, Defendants committed to, among other things, supplying a computer equipped with assistive technology for blind inmates. Ex. N-27. That computer broke in 2016, Ex. Q, Smart Dep. 185:6–21, and it was not replaced until December 2018, Ex. G-108, at BROWN 3668. Today, no one at RCI knows how to operate the computers with assistive technology for the blind, blind inmates cannot use them, they are not attached to a printer (and thus cannot be used to write), and they lack access to legal databases. *See supra* Undisputed Facts Part IV.A. Similarly, RCI's library had a scanner capable of reading text aloud, but it was broken at least as early as January 2016 and was not replaced until December 2018. *See supra* Undisputed Facts Part IV.A.

Inmate complaints evidence DPSCS's deliberate indifference to blind inmates' rights to effective communication under the ADA. Mr. Brown prevailed on an ARP in 2009, wherein case managers were directed to read blind inmates' legal mail to them. Ex. 78; *see* Ex. 79. Defendants

[11] Nor did each Plaintiff need to request modifications individually. This Court has held that past complaints by parties other than the plaintiff place a Title II entity on "notice of potential liability" sufficient to establish deliberate indifference. *Proctor*, 32 F. Supp. 2d at 829; *see also Chisholm*, 275 F.3d at 330 ("While it is true that public entities are not required to guess at what accommodations they should provide, the requirement does not narrow the ADA or RA so much that the [public entity] may claim [the disabled person] failed to request an accommodation when it declined to discuss the issue with him." (quoting *Randolph v. Rodgers*, 170 F.3d 850, 858–59 (8th Cir. 1999)).

failed to enforce this policy: at their depositions, case managers denied they had such an obligation. *See supra* Undisputed Facts Part IV.B. When Mr. Snead grieved that he had no effective assistance writing ARPs, DPSCS dismissed the complaint. *Id.* In their initial contact with this Court, Plaintiffs described lack of access to reading and writing in nearly all areas of life at RCI, including legal documents, personal mail, and complaints and grievances. ECF No. 1. Three years later, Defendants have provided no remedy.

Defendants also had knowledge that inmate walkers were a dangerous and inadequate accommodation for blind inmates to navigate RCI and that other options were available. Because it is dangerous for one inmate to be dependent on another, it is against DPSCS policy to place inmates "under the control or custody of other inmates." Ex. C, Campbell 30(b)(6) Dep. 399:7–400:7; *see supra* Undisputed Facts Part VI, Argument Part II.A.5. That is what the walker program does. Furthermore, DPSCS officials admitted that it was dangerous to allow sex offenders to be walkers, but they did not screen out such offenders until 2018. Ex. M, Gelsinger Dep. 157:9–158:4, 158:10–159:8. *See also* Ex. P, Jahnke Dep. 82:21-84:9; 87:16-91:12; Ex. P-135.

Inmate complaints also put DPSCS on notice of the danger of the walker program. Officer Conrad admitted receiving complaints that walkers were "unavailable, unwilling, or late" in performing their duties. Ex. L, Conrad Dep. 22:14–20. DPSCS's designee was "sure" that walkers had been "fired, or transferred, or reassigned from blind inmates because of complaints." Ex. E, Reid 30(b)(6) Dep. 228:20–229:3. Mr. Hammond sought medical attention when his walker attacked him. *See supra* Undisputed Facts Part VI. Mr. Delano complained in 2014 he felt unsafe because his walker invited another inmate to slap him and then called him a snitch. Ex. 80, W DELANO 212. In 2015, Mr. Delano explained to Lt. Landis, DPSCS's safety officer, Ex. AA, Schenck Dep. 165:17–18, that "I should not be escorted by another inmate which is supervised in fact is inmate control over another inmate. This means I'm not safe at all . . . ." Lt. Landis ignored this statement. Ex. 81.

DPSCS has known for years that blind people can be taught to navigate safely and independently. It explored options for "life skills" training in 2015 but abandoned them. Ex. G, Miller Dep. 90:5–9, 95:8–101:20, 102:15–103:5, 103:8–111:6, 114:15–114:21. DPSCS acted deliberately indifferently in knowingly rejecting a reasonable modification and alternative to the dangerous walker program.

Finally, DPSCS's failure to follow single celling orders was deliberately indifferent to blind inmates' right to safe housing. The medical orders themselves gave DPSCS notice that these modifications were necessary. Even DPSCS employees believed that blind inmates required single cells for their safety. Ex. 82; Ex. M, Gelsinger 26:9–34:12, 188:2–189:13. Blind inmates complained to DPSCS that double-celling placed them at risk. Ex. G, Miller Dep. 383:18–384:5; Ex. 83; Ex. 84; Ex. 85; Ex. 62; Ex. 86. At least one correctional officer interfered with medical decisions about single celling. Ex. 87.

DPSCS's failure to consistently provide reasonable modifications and auxiliary aids and services to blind inmates was therefore knowing and willful and entitles Plaintiffs to compensatory damages to be proven at trial.

CONCLUSION

For the foregoing reasons, Plaintiffs' Motion for Partial Summary Judgment should be granted and Defendants should be held liable for violating the ADA and Section 504.

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Respectfully submitted,

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