

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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:  
CARLOS ROSARIO, ROGER ZYDOR, MARSHALL :  
ROSADO, DONALD SMITH, WORLEY HALL, :  
VINCENT RIOS, GILBERT SANTIAGO :  
CHRISTOPHER ALDRICH, RODERICK REYES, :  
individually and on behalf of all others similarly :  
situated, :

Plaintiffs, :

vs. :

NEW YORK STATE DEPARTMENT OF CORRECTIONAL :  
SERVICES (“DOCS”), GLENN S. GOORD, DOCS :  
Commissioner, FRANK HEADLY, DOCS Deputy Commissioner :  
for Programs, STEPHEN BERNARDI, DOCS Deputy :  
Commissioner of Policy and Compliance Review, DONNA :  
MASTERSON, DOCS Americans with Disabilities Act :  
Coordinator, LESTER WRIGHT, DOCS Deputy Commissioner :  
and Chief Medical Officer, WILLIAM MAZZUCA, :  
Superintendent, Fishkill Correctional Facility (“CF”), KENNETH :  
PERLMAN, Superintendent, Mohawk CF, EDWARD :  
DONNELLY, Superintendent, Wende CF, JIMMY HARRIS, :  
Deputy Superintendent for Programs, Fishkill CF, JIM MANCE, :  
Deputy Superintendent for Programs, Mohawk CF, HELEN :  
DEAN, Deputy Superintendent for Programs, Wende CF, ANNE :  
COLE, Deputy Superintendent for the Correctional Health Care :  
Facility, Fishkill CF, JOAN ROSADO, Deputy Superintendent for :  
the Correctional Health Care Facility, Walsh RMU, SUSAN POST, :  
Deputy Superintendent for the Correctional Health Care Facility, :  
Wende CF :

Defendants. :

: 03 CIV 0859 (CLB)(LMS)

: AMENDED  
: COMPLAINT

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Plaintiffs, prisoners with disabilities of the state of New York, bring this complaint against Defendants and allege as follows:

### **PRELIMINARY STATEMENT**

1. This is a class action for injunctive relief brought under Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act to redress the Defendants' failure to provide access to prison programs, services and activities to prisoners with disabilities who are in the custody of the Department of Correctional Services and housed in its Regional Medical Units (RMUs). Plaintiffs seek to represent a class of individuals with disabilities housed in the Fishkill, Walsh and Wende RMUs, who are not provided access to prison programs available to non-disabled prisoners, such as educational, vocational, work and substance abuse programs, including those that would qualify them for an earlier release from prison.

### **JURISDICTION AND VENUE**

2. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1343(3) and (4). The matters in controversy arise under the Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq., and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794.

3. Venue properly lies in this District pursuant to 28 U.S.C. § 1391(b)(2).

### **PARTIES**

#### **PLAINTIFFS**

4. Plaintiffs are members of and they seek to represent a class of individuals, under the custody and control of the New York State Department of Correctional Services (DOCS), who have physical impairments that substantially limit one or more of their major life activities.

They have been and continue to be denied access to the programs, services and activities run by defendants because of their disabilities and have been confined in facilities operated by and under the control of DOCS. Class members are all housed in RMUs at Fishkill Correctional Facility, Wende Correctional Facility and in the Walsh RMU on the grounds of Mohawk Correctional Facility.

5. All Plaintiffs are “individuals with disabilities” as that term is defined in Section 504 of the Rehabilitation Act of 1973 , 29 U.S.C. § 794, and the Americans with Disabilities Act, 42 U.S.C. § 12102(2). They all, with or without reasonable accommodations, meet the essential eligibility requirements for receiving services or participating in programs or activities provided by DOCS.

6. Carlos Rosario

- a. Plaintiff Carlos Rosario is currently housed in the RMU at Fishkill Correctional Facility.
- b. Mr. Rosario is paraplegic and requires a wheelchair for mobility.
- c. Despite his ability to participate in prison vocational programs and outdoor recreation, he has been and continues to be denied participation in these programs.

7. Roger Zydor

- a. Plaintiff Roger Zydor is currently housed in the RMU at Fishkill Correctional Facility.
- b. Mr. Zydor has a respiratory impairment.
- c. He is otherwise eligible for the Merit Time program, except that he has

been denied participation in any programs, participation in which is required for an inmate to qualify him for Merit Time.

- d. Despite his ability to participate in prison programs that would make him eligible for Merit Time, he has been and continues to be denied participation in these programs. He has also been and continues to be denied participation in outdoor recreation.

8. Donald Smith

- a. Plaintiff Donald Smith is currently housed in the RMU at Fishkill Correctional Facility.
- b. Mr. Smith has asthma and cardiac problems.
- c. Despite his ability to participate in prison vocational and educational programs and outdoor recreation, he has been and continues to be denied participation in these programs.

9. Worley Hall

- a. Plaintiff Worley Hall is currently housed in the RMU at Fishkill Correctional Facility.
- b. Mr. Hall has diabetes and hypertension.
- c. Despite his ability to participate in prison vocational and educational programs and outdoor recreation, he has been and continues to be denied participation in these programs.

10. Gilbert Santiago

- a. Plaintiff Gilbert Santiago is currently housed in the RMU at Fishkill

Correctional Facility.

- b. Mr. Santiago has neuropathy caused by a chronic condition and has a limited ability to ambulate.
- c. Despite his ability to participate in prison vocational programs and outdoor recreation, he has been and continues to be denied participation in these programs.

11. Marshall Rosado

- a. Plaintiff Marshall Rosado is currently housed in the RMU at Fishkill Correctional Facility.
- b. Mr. Rosado has spastic paralysis secondary to chronic cerebral palsy. He requires a wheelchair for mobility.
- c. Despite his ability to participate in prison vocational programs and outdoor recreation, he has been and continues to be denied participation in these programs.

12. Vincent Rios

- a. Plaintiff Vincent Rios is currently housed in the RMU at Fishkill Correctional Facility.
- b. Mr. Rios has neuropathy caused by a chronic condition and requires a wheelchair for mobility.
- c. He is otherwise eligible for the Merit Time program, except that he has been denied participation in any programs, participation in which is required for an inmate to qualify him for Merit Time.

- d. Despite his ability to participate in prison programs that would make him eligible for Merit Time, he has been and continues to be denied participation in these programs. He has also been and continues to be denied participation in outdoor recreation.

13. Christopher Aldrich

- a. Plaintiff Christopher Aldrich is currently housed in the R.M.U at Wende Correctional Facility.
- b. Mr. Aldrich has coronary artery disease and a respiratory impairment. He also has a limited ability to ambulate.
- c. He has been and continues to be denied access to vocational programs and the Alcohol and Substance Abuse Treatment program.

14. Roderick Reyes

- a. Plaintiff Roderick Reyes is housed in the Walsh RMU at Mohawk Correctional Facility.
- b. Mr. Reyes has sickle cell anemia.
- c. Despite his ability to participate in prison vocational and therapeutic programs as well as outdoor recreation, he has been and continues to be denied participation in these programs.

15. All of the above-named plaintiffs have requested participation in educational programs, vocational programs and/or outdoor recreation and have exhausted the administrative remedies available to them.

## **DEFENDANTS**

16. Defendant DOCS is the agency created by the State of New York for the purpose of operating prison facilities within New York State.

17. Defendant Glenn S. Goord is the Commissioner of DOCS and is sued in his official capacity. As DOCS Commissioner, Mr. Goord is responsible for the operation and administration of all facilities within DOCS.

18. Defendant Frank Headley is the DOCS Deputy Commissioner for Program Services and is sued in his official capacity. As Deputy Commissioner, Mr. Headley is responsible for the administration of programs, including vocational, work and educational programs, provided in the DOCS system.

19. Defendant Stephen Bernardi is the DOCS Deputy Commissioner of Policy and Compliance Review and is sued in his official capacity. As Deputy Commissioner, Mr. Bernardi is responsible for ensuring that the policies of DOCS and all of its institutions comply with Section 504 of the Rehabilitation Act and the Americans with Disabilities Act.

20. Defendant Donna Masterson is the DOCS Americans with Disabilities Act (“ADA”) Coordinator and is sued in her official capacity. As ADA Coordinator, Ms. Masterson is responsible for ensuring that all programs, activities and services operated by and under the control of DOCS comply with Section 504 of the Rehabilitation Act and the Americans with Disabilities Act.

21. Defendant Lester Wright, M.D., M.P.H., is the DOCS Deputy Commissioner and Chief Medical Officer and is sued in his official capacity. As Deputy Commissioner and Chief Medical Officer, Dr. Wright is responsible for ensuring that medical staff conduct an

individual assessment of a prisoner's disability, including his or her ability to perform the tasks required by program participation.

22. Defendant William Mazzuca is the Superintendent at Fishkill Correctional Facility and is sued in his official capacity. As Superintendent, Mr. Mazzuca is responsible for the operation and administration of Fishkill Correctional Facility and the Fishkill RMU.

23. Defendant Jimmy Harris is the Deputy Superintendent for Programs at Fishkill Correctional Facility and is sued in his official capacity. Mr. Harris is responsible for overseeing the provision of prison programs at Fishkill as well as for overseeing the provisions of reasonable accommodations and compliance with the DOCS directive on reasonable accommodations.

24. Defendant Anne Cole is the Deputy Superintendent for the Correctional Health Care Facility at Fishkill Correctional Facility and is sued in her official capacity. Ms. Cole is the chief administrative officer of the RMU at Fishkill and oversees its operations.

25. Defendant Kenneth Perlman is the Superintendent at Mohawk Correctional Facility and is sued in his official capacity. As Superintendent, Mr. Perlman is responsible for the operation and administration of Mohawk Correctional Facility, including Walsh RMU, located on the grounds of Mohawk.

26. Defendant Jim Mance is the Deputy Superintendent for Programs at Mohawk Correctional Facility and is sued in his official capacity. Mr. Mance is responsible for overseeing the provision of prison programs at Mohawk and the Walsh RMU as well as for overseeing the provision of reasonable accommodations and compliance with the DOCS directive on reasonable accommodations.

27. Defendant Joan Rosado is the Deputy Superintendent for the Correctional

Health Care Facility at the Walsh RMU and is sued in her official capacity. Ms. Rosado is the chief administrative officer of the RMU at Walsh and oversees its operations.

28. Defendant Edward Donnelly is the Superintendent at Wende Correctional Facility and is sued in his official capacity. As Superintendent, Mr. Donnelly is responsible for the operation and administration of Wende Correctional Facility and the Wende RMU.

29. Defendant Helen Dean is the Deputy Superintendent for Programs at Wende Correctional Facility and is sued in her official capacity. Ms. Dean is responsible for overseeing the provision of prison programs at Wende, as well as for overseeing the provisions of reasonable accommodations and compliance with the DOCS directive on reasonable accommodations.

30. Defendant Susan Post is the Deputy Superintendent for the Correctional Health Care Facility at Wende Correctional Facility and is sued in her official capacity. Ms. Post is the chief administrative officer of the RMU at Wende and oversees its operations.

### **FACTS COMMON TO THE CLASS**

31. Regional Medical Units are facilities operated by the Department of Correctional Services that exist to provide long-term skilled nursing care and rehabilitative services to prisoners whose disabilities require that they be housed in such a setting or whose medical condition requires that they receive a higher level of care than is available in the general population. Prisoners are sometimes transferred from an RMU in one facility to an RMU in another.

32. It is the policy and practice of DOCS to deny vocational, educational, work and the complete Alcohol and Substance Abuse Treatment (“ASAT”) program to prisoners with disabilities who are housed in the Fishkill, Walsh and Wende RMUs. Instead of providing an

individualized assessment of each prisoner's ability to perform in prison programs and their needs for reasonable accommodations, DOCS denies these programs to all of the prisoners with disabilities who are housed in these RMUs.

33. DOCS has stated in writing its policy of not providing any "classroom-type programs," including ASAT and vocational programs in the RMUs, in responses to grievances filed by the named Plaintiffs at the institutional level as well as in responses given by the DOCS Central Office Review Committee, the entity within DOCS responsible for the agency's final disposition of prisoner grievances.

34. The named Plaintiffs are physically and mentally able to participate in the programs to which they have requested and been denied access.

35. DOCS prisoners housed in the general population are offered the opportunity to participate in programs, including educational programs, vocational classes, work program and substance abuse treatment. Programs comparable to those offered in the general population are not offered to Plaintiffs at Fishkill, Walsh and Wende RMUs.

36. Merit Time allowances are awarded to prisoners serving indeterminate sentences for certain non-violent crimes who also meet certain other eligibility criteria. The Merit Time allowance is one-sixth of the minimum term or period imposed by the court. When granted, Merit Time allowances enable prisoners to appear before the Board of Parole for possible release on their merit eligibility dates.

37. One of the requirements prisoners must satisfy in order to be eligible for Merit Time is the successful completion of one of several program requirements, including receiving an ASAT certificate, receiving a vocational trade certificate, earning a general equivalency diploma

or performing at least 400 hours of service on a community work crew. It is the policy and practice of DOCS not to offer any of these qualifying programs to prisoners housed in the Fishkill, Walsh and Wende RMUs.

38. It is the policy and practice of DOCS not to provide prisoners with disabilities housed in the RMUs with reasonable accommodations that would allow them access to the benefits of Merit Time allowances.

39. DOCS prisoners not confined to disciplinary housing are generally afforded daily outdoor recreation in a prison yard. Prisoners housed in the Fishkill RMU are not provided with outdoor recreation. Instead they are permitted only to congregate on a small second-story porch that is enclosed by a ceiling, solid walls on three sides and wire mesh on the fourth side.

#### **CLASS ACTION ALLEGATIONS**

40. Plaintiffs bring this action on their own behalf and, pursuant to Rule 23(b)(1) and Rule 23(b)(2) of the Federal Rules of Civil Procedure, on behalf of all prisoners with physical disabilities, as defined in 29 U.S.C. § 705(20) and 42 U.S.C. § 12102, who are now, or will in the future be, under the custody of DOCS and housed in the Fishkill, Walsh or Wende RMU.

- a. The Fishkill, Walsh and Wende RMUs together house approximately 252 prisoners at any given time.
- b. Upon information and belief, a significant portion of prisoners housed in these RMUs are qualified individuals with disabilities as defined by the ADA and Section 504 of the Rehabilitation Act. All of them are denied access to prison programs as well as the benefit of an individualized assessment of their disability to determine which prison programs they are able to participate in. Because the

size of the class is so numerous and because the membership of the class continuously changes, joinder of all members is impracticable.

- c. The conditions, practices and omissions that form the basis of this complaint are common to all members of the class and the relief sought will apply to all of them.
- d. The claims of the Plaintiffs are typical of the claims of the entire class.
- e. The prosecution of separate actions by individual members of the class would create a risk of inconsistent and varying adjudications that would establish incompatible standards of conduct for the Defendants. Fed. R. Civ. P. 23(b)(1)(A).
- f. The prosecution of separate actions by individual members of the class would create a risk of adjudications with respect to individual members which would, as a practical matter, substantially impair the ability of other members to protect their interests. F.R.C.P. 23(b)(1)(B).
- g. Defendants have acted or refused to act on grounds generally applicable to the class, making appropriate injunctive and declaratory relief with respect to the class as a whole. F.R.C.P. 23(b)(2).
- h. There are questions of law and fact common to the members of the class, including whether defendants have violated the Americans with Disabilities Act and Section 504 of the Rehabilitation Act, based on their failure to provide prison programs to prisoners with disabilities housed in the RMUs.
- i. The named Plaintiffs are capable of fairly and adequately representing the class and protecting its interests. The Legal Aid Society, Prisoners' Rights Project, counsel for Plaintiffs, is a legal services organization experienced in prisoners' civil rights

litigation that, through prior such litigation, has secured court-ordered institutional reform within several DOCS operated prisons.

## **CAUSES OF ACTION**

### **FIRST CAUSE OF ACTION**

#### **Violations of the Americans with Disabilities Act**

41. Plaintiffs are qualified individuals with disabilities as defined in the Americans with Disabilities Act. They have physical impairments that substantially limit one or more major life activity, including but not limited to walking, breathing, performing manual tasks and self-care; they have records of having such an impairment; or they are regarded as having such an impairment. As state prisoners, all plaintiffs meet the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by defendants DOCS. 42 U.S.C. § 12102(2); 42 U.S.C. § 12131 (2).

42. Defendants discriminate against physically disabled prisoners by denying access to prison educational, vocational and work programs, substance abuse treatment and outdoor recreation in the RMUs.

43. Defendants discriminate against Plaintiffs on the basis of their disabilities in violation of 42 U.S.C. § 12132.

44. Defendants are agents or officials of public entities and/or public entities as that term is defined under 42 U.S.C. § 12131(1)(B).

## **SECOND CAUSE OF ACTION**

### **Violations of Section 504 of the Rehabilitation Act (Section 504)**

45. Plaintiffs are qualified individuals with disabilities as defined in Section 504 of the Rehabilitation Act. They have physical impairments that substantially limit one or more major life activity, including but not limited to walking, breathing, performing manual tasks and self-care; they have records of having such an impairment; or they are regarded as having such an impairment. As state prisoners, all plaintiffs meet the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by defendants DOCS. 42 U.S.C. § 12102(2); 42 U.S.C. § 12131 (2); 29 U.S.C. § 794.

46. Defendants discriminate against Plaintiffs solely on the basis of their disabilities by failing to provide access to prison educational, vocational and work programs, substance abuse treatment and outdoor recreation.

47. DOCS receives federal financial assistance.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs request that this Court grant them the following relief:

48. Adjudge and declare that the policies, practices, omissions and conditions described above are in violation of the rights of the Plaintiffs and the class they seek to represent under the Americans with Disabilities Act and Section 504 of the Rehabilitation Act;

49. Permanently enjoin Defendants, their agents, employees and all persons acting in concert with them, from subjecting Plaintiffs and the putative class to the illegal policies, practices, omissions and conditions described above;

50. Order Defendants, their agents, employees and all persons acting in concert with them, to perform individualized assessments of all prisoners housed in the Fishkill, Walsh and Wende RMUs to determine the extent of their abilities to participate in programs and the reasonable accommodations that they will need to do so.

51. Order Defendants, their agents, employees and all persons acting in concert with them, to take all necessary action to provide a full range of programming options, including educational, vocational and work programs as well as outdoor recreation, to prisoners with disabilities housed in the Fishkill, Walsh and Wende RMUs.

52. Order Defendants, their agents, employees and all persons acting in concert with them to provide reasonable accommodations to prisoners with disabilities housed in the Fishkill, Walsh and Wende RMUs so that they will be afforded program opportunities equivalent to those made available to other prisoners in DOCS custody.

53. Order Defendants, their agents, employees and all persons acting in concert with them to accommodate prisoners with disabilities housed in the Fishkill, Walsh and Wende RMUs by protecting them from any collateral consequences resulting from DOCS' failure to allow them access to prison programs that would have been available to them had they not been housed in an RMU.

54. Award Plaintiffs, pursuant to 29 U.S.C. § 794(b) and 42 U.S.C. § 12205, the costs of this suit and reasonable attorneys' fees and litigation expenses.

55. Retain jurisdiction of this case until defendants have fully complied with the orders of this Court, and there is a reasonable assurance that defendants will continue to comply in the future; and

56. Award such other and further relief as the Court deems just and proper.

Dated: April \_\_\_, 2003

New York, N.Y.

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