

SETTLEMENT AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA
AND

THE NEW YORK CITY DEPARTMENT OF CORRECTIONS

WHEREAS, the United States of America (the "United States"), by its attorney, David N. Kelley, United States Attorney for the Southern District of New York, received a complaint (the "Complaint") from an inmate in the custody of the New York City Department of Correction ("DOC") alleging that DOC violated Title II of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12131 et seq.; and

WHEREAS, the complainant alleged, among other things, that DOC had not designated a responsible employee to coordinate DOC's efforts to comply with DOC's obligations under the ADA with respect to DOC inmates, and refused to provide the complainant with the name, office address, and telephone number of that employee, see 28 C.F.R. § 35.107; and

WHEREAS, under Title II of the ADA, "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subject to discrimination by any such entity." 42 U.S.C. § 12132; and

WHEREAS, DOC is a "public entity" for purposes of 42 U.S.C. § 12132 and the implementing regulations, 28 C.F.R. § 35.104; and

WHEREAS, as a public entity with fifty or more employees, DOC is obligated under the ADA 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 this part." 28 C.F.R. § 35.107(a); and

WHEREAS, the ADA also obligates DOC to "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(a); and

WHEREAS, the ADA also obligates DOC to "adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by this part." 28 C.F.R. § 35.107(b); and

WHEREAS, the United States is authorized to investigate complaints alleging a violation of Title II, to review whether public entities are in compliance with Title II, and, where appropriate, to negotiate and enter into agreements to secure voluntary compliance with the law. See 28 C.F.R. § 35.170-173; and

WHEREAS, the United States is also authorized to bring a civil action to enforce Title II of the ADA should the United States be unable to secure voluntary compliance by the public entity. See 42 U.S.C. § 12133; 28 C.F.R. Part 35, Subpart F; and

WHEREAS, the United States and DOC have the mutual goal of resolving the complaint and ensuring that DOC complies with the requirements of Title II of the ADA as set forth above; and

WHEREAS, to resolve the complaint under investigation, the United States and DOC hereby enter into this voluntary compliance agreement ("Agreement");

NOW, THEREFORE, IT IS HEREBY AGREED, BY AND BETWEEN THE UNITED STATES OF AMERICA AND THE NEW YORK CITY DEPARTMENT OF CORRECTION, AS FOLLOWS:

I. DISABILITY RIGHTS COORDINATOR FOR INMATES

1. Designation

DOC shall designate at least one employee with responsibility to coordinate DOC's efforts to comply with and carry out its responsibilities under the ADA with respect to inmates (the "Disability Rights Coordinator for Inmates").

2. Duties and Responsibilities.

(A) The Disability Rights Coordinator for Inmates shall have the responsibility and authority to: ensure that procedures for the prompt and equitable resolution of ADA

complaints by inmates and/or requests by inmates with disabilities for reasonable accommodations are in place, publicized, and implemented; process, investigate, and promptly act upon inmate complaints and/or requests for reasonable accommodations; ensure that all DOC staff who interact with inmates with disabilities are provided with adequate and appropriate information and training on ADA issues; ensure that inmates with disabilities are housed in facilities that accommodate their disabilities and that all applicable DOC facilities and programs are ADA compliant; compile and maintain such information concerning inmates with disabilities in the custody of DOC as is necessary to carry out the duties and responsibilities of the position; develop and maintain an inventory of written materials and other resources concerning ADA compliance (including, without limitation, laws, regulations, reference materials, educational materials, DOJ publications, and contact information); and otherwise coordinate DOC's efforts to comply with and carry out its responsibilities under the ADA with respect to inmates. The Disability Rights Coordinator for Inmates shall also serve as a resource for inmates, other DOC employees, and for representatives of federal, state, and city government agencies who have questions regarding DOC inmates with disabilities, DOC's obligations with respect to inmates with disabilities, and DOC procedures concerning ADA compliance.

(B) The Disability Rights Coordinator for Inmates shall be a full-time position. DOC shall not give the Disability Rights Coordinator for Inmates duties and responsibilities that are unrelated to ADA compliance. The Disability Rights Coordinator for Inmates shall be generally available during normal business hours to respond to inmate requests and complaints

and answer questions from and provide advice and assistance to DOC and facility personnel. If actual experience under this agreement for a period of at least one year demonstrates that an employee designated as the Disability Rights Coordinator for Inmates can effectively carry out the duties and responsibilities set forth in this Agreement on less than a full-time basis, DOC may request the consent of the United States to modify the requirements of this paragraph to permit DOC to provide the employee designated as Disability Rights Coordinator for Inmates with additional duties and responsibilities unrelated to ADA compliance, which consent of the United States shall not unreasonably be withheld. Any such request for consent shall be supported by documentation and information adequate to demonstrate to the satisfaction of the United States that the duties and responsibilities of the position can be effectively performed on less than a full-time basis.

(C) DOC shall develop a job description for the position of Disability Rights Coordinator for Inmates. The job description shall include all duties, responsibilities, and qualifications set forth in this Agreement.

3. Qualifications.

DOC shall establish qualifications for the position of Disability Rights Coordinator for Inmates sufficient to ensure that the Disability Rights Coordinator for Inmates possesses the educational background, experience, and skills necessary to carry out all of the duties and responsibilities of the position, and knowledge and experience dealing with the legal rights of persons with disabilities and the obligations of public entities under federal and state disability laws. DOC shall not designate any person to serve as the Disability Rights Coordinator, or maintain any person in that position, who does not possess the requisite background, experience, and skills in carrying out the duties and responsibilities of the position.

4. Training.

DOC shall provide the Disability Rights Coordinator for Inmates with such training as necessary to ensure that the Disability Rights Coordinator for Inmates is fully knowledgeable about the legal rights of inmates with disabilities and the legal obligations of DOC with respect to inmates with disabilities.

5. Information Concerning Inmates with Disabilities.

DOC shall modify existing directives, rules, policies and procedures concerning the screening and classification of inmates upon entry into the custody of DOC to ensure that, when a person with or claiming a disability is received into the custody of DOC, the Disability Rights Coordinator for Inmates is advised within 24 hours (or, if intake occurs over the weekend or on a public holiday, by the next business day) of the inmate's name, the nature of the inmate's disability, and any request for accommodation made by that inmate upon intake.

6. Facility Contact Persons.

In addition to designating a Disability Rights Coordinator for Inmates, DOC shall designate at least one civilian administrative employee who is permanently assigned to each correctional facility within DOC at which any inmate with a disability is housed to serve as the Disability Rights Contact Person for that facility. Each Disability Rights Facility Contact Person shall serve as a liaison between inmates in the facility and the Disability Rights Coordinator for Inmates, serve as an on-site resource for inmates with disabilities, and may refer informal requests for reasonable accommodations and informal complaints about non-compliance with the ADA at the facility to the Disability Rights Coordinator for Inmates. Disability Rights Facility Contact Persons may also implement any responsive or remedial action directed by the Disability Rights Coordinator. DOC shall provide such in-house training to Disability Rights Facility Contact Person(s) as necessary to ensure their ability to serve effectively in that capacity.

II. DISSEMINATION OF CONTACT INFORMATION

7. DOC shall publicize to all inmates, and make available to inmate advocates and representatives upon request, the name, office address, and telephone number of the Disability Rights Coordinator for Inmates and the Disability Rights Facility Contact Person(s) at each facility. Such information shall be included in the inmate handbook provided to inmates upon admission to the custody of DOC and on conspicuous posters of suitable size posted in locations in each facility where notices to inmates are normally posted.

III. DISABILITY RIGHTS GRIEVANCE PROCEDURES

8. DOC shall adopt and publish grievance procedures providing for the prompt and equitable resolution by the Disability Rights Coordinator for Inmates of requests by inmates with disabilities for reasonable accommodations and complaints by inmates alleging any action that would be prohibited by the ADA. Such procedures shall provide for decision and, if appropriate, corrective action, on any complete complaint or complete request within no more than five business days after the date of its submission. If the Disability Rights Coordinator for Inmates receives a complaint or request that is not complete, the Disability Rights Coordinator for Inmates shall notify the inmate within five business days that the complaint or request is incomplete and identify the additional information that is needed to complete the complaint or request. The grievance procedures required to be implemented under this paragraph shall be printed in the Inmate Rule Book that is provided to all inmates upon admission into DOC custody.

IV. APPROVAL OF ACTIONS AND MATERIALS

9. Within one hundred and twenty days after the effective date of this Agreement, DOC shall submit to the United States for its approval all written materials required to be

created or disseminated by DOC under this Agreement, including, without limitation, the following: (a) the job description for the position of Disability Rights Coordinator required under paragraph 2(C) of this Agreement; (b) the directives, rules, policies and/or procedures modified to comply with paragraph 5 of this Agreement; (c) the written materials and posters disseminating contact information required under paragraph 7 of this Agreement; and (d) the grievance procedure required under paragraph 8 of this paragraph. If the United States determines that any action taken or written material developed under this Agreement are inadequate to satisfy DOC's obligations under the ADA or this Agreement, the United States shall notify DOC of its objections and DOC shall take the corrective action or revise such written materials as reasonably requested in writing by the United States within 60 days after receiving such written request.

V. MONITORING AND COMPLIANCE

10. Annual Report and Review of Decisions.

Every year during the term of this Agreement on the anniversary date of the effective date of the Agreement, DOC shall provide to the United States a narrative report of the actions taken by the Disability Rights Coordinator for Inmates during the preceding year and any plans for action concerning ADA compliance in the coming year. The report shall include as an exhibit copies of all inmate complaints or requests for reasonable accommodation received by the Disability Rights Coordinator for Inmates and all documents reflecting any actions taken or decisions rendered by the Disability Rights Coordinator for Inmates in response such complaints or requests during the reporting period.

11. Certification and Report.

Within one hundred and twenty days after the effective date of this Agreement, DOC shall certify to the United States that it has complied with all of the provisions of this Agreement. Such certification shall be accompanied by a narrative report that includes a description of the actions

DOC has taken to comply with the provisions of this Agreement, including the dates these actions were taken and any documents reflecting these actions.

12. Cooperation.

For purposes of monitoring compliance, DOC shall cooperate in good faith with any and all reasonable requests by the United States for information and documents concerning DOC's compliance with this Agreement and the ADA.

VI. ENFORCEMENT

13. If the United States believes that this Agreement or any of its requirements have been violated, it will notify DOC in writing and attempt to resolve the issue or issues in good faith. If the United States and DOC are unable to reach a satisfactory resolution of the issue or issues within 90 days of the date the United States provides notice to DOC, the United States may (A) initiate appropriate steps to enforce Title II of the ADA, including but not limited to issuing a Letter of finding and, if necessary, commencing a civil action in the United States District Court for the Southern District of New York based upon the complaint described above; and/or; (B) commence a civil action seeking to have the terms of this Agreement enforced in the United States District Court for the Southern District of new York. DOC shall not be considered in violation of any deadline imposed by this Agreement provided that DOC requests and receives, in advance of such deadline, the consent of the United States to a reasonable extension of such deadline, which consent shall not unreasonably be withheld. For purposes of this Paragraph, a single request for an extension of time no longer than 45 days shall be considered presumptively reasonable.

VII. GENERAL PROVISIONS

14. In consideration for DOC's timely performance of all of its obligations under this Agreement, the United

States agrees to refrain from undertaking further investigation or from commencing a civil action against DOC based upon the complaint described above, except as provided in the Enforcement portion of this Agreement. The United States reserves the right to investigate any other ADA complaint it receives concerning DOC and to investigate and commence a civil action with respect to any violation of the ADA other than the alleged violations expressly identified in the Agreement.

15. The parties acknowledge that this Agreement is a public document and that a copy of this Agreement shall be made available to any person upon request.

16. The effective date of this Agreement is the date of the last signature on the Agreement. The term of this Agreement is three years from the effective date.

17. This Agreement does not purport to remedy any violation of the ADA other than the alleged violations expressly identified above. This Agreement is not intended to certify or signify full compliance by DOC with the ADA or constitute a finding by the United States of such compliance, and it may not be used in any proceeding to signify such compliance. This Agreement does not affect DOC's continuing responsibility to comply with all aspects of the ADA. This Agreement is not intended to reflect any legal interpretation of any provisions of the ADA by the

United States, and it may not be used in any proceeding to demonstrate such legal interpretations. This agreement represents a compromise of claims and does not constitute an admission by DOC of violation of any provision of the ADA or other provision of applicable law.

18. The individuals signing this Agreement represent that they are authorized to bind the parties to this Agreement.

19. Failure by the United States to enforce the entire Agreement with regard to any deadline or any other provision of the Agreement, shall not be construed as a waiver of its right to enforce other deadlines or provisions of the Agreement.

20. This Agreement constitutes the entire agreement between the parties relating to the complaint, and no other statement, promise, or agreement, either written or oral, made by either party or agents of either party, that is not contained in this Agreement, shall be enforceable.

New York, New York
August 5, 2004

FOR THE UNITED STATES

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New York, New York
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