IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

DONTAY BATTLE, NECOAS WILSON,
DAVID UNDERWOOD, CHRISTAL HELTON,
PATRICK DOWNS, and DISABILITY RIGHTS TENNESSEE,
in its associational capacity and in conjunction
with Plaintiffs Battle, Wilson, Underwood, Helton, and
Downs,

Plaintiffs,

vs.

STATE OF TENNESSEE, TENNESSEE DEPARTMENT
OF DEVELOPMENTAL AND INTELLECTUAL
DISABILITIES, and TENNESSEE DEPARTMENT
OF MENTAL HEALTH AND SUBSTANCE ABUSE
SERVICES,

Defendants.

COMPLAINT

Plaintiffs Dontay Battle, Necoas Wilson, David Underwood, Christal Helton, Patrick Downs, and Disability Rights Tennessee ("DRT"), in its associational capacity as the Protection & Advocacy System ("P&A") for the State of Tennessee, on behalf of its constituents, and in conjunction with Plaintiffs Battle, Wilson, Underwood, Helton, and Downs (collectively referred to herein as "Plaintiffs"), by and through counsel, hereby file this Complaint against the State of Tennessee ("the State"), the Tennessee Department of Developmental and Intellectual Disabilities ("DIDD"), and the Tennessee Department of Mental Health and Substance Abuse Services ("DMHSAS"), collectively referred to herein as "Defendants."

I. INTRODUCTION

1. This is an action for declaratory, injunctive, and compensatory relief pursuant to Title II of the Americans with Disabilities Act ("Title II of the ADA"), 42 U.S.C. § 12131 et seq., and Section 504 of the Rehabilitation Act of 1973 ("Section 504"), 29 U.S.C. § 794 et seq.

2. Imagine you are Deaf[1], and you see people moving their mouths, and you know they are trying to communicate with you, but you hear and understand absolutely nothing. They may write letters on a sticky note and hand it to you, but you still do not understand. You can communicate by signing with your hands, but nobody makes an effort to understand your language. You have problems making friends in your group home. You cannot understand the rules of the house. You see your roommates and staff laughing. You desperately want to connect to them, but nobody understands your hand signs. They look at you puzzled and turn away. You go to your yearly planning meeting, and you sit there, unable to hear what others are saying about your life, while they alone make plans about you and your future. You are required to sit in daily mental health group therapy sessions. You see your peers talking, crying, and nodding their heads, but you do not understand what they are saying. You are helpless to participate in these things without the help of someone who knows sign language.

3. Your frustration grows, but nobody attempts to understand your language. You feel left out, isolated, confused, and are unable to fully participate in activities and programs in which your peers participate. You live in silence, and your world is shrinking around you because you

[1] Uppercase "D" Deaf typically refers to people who share a language—American Sign Language (ASL)—and culture with other Deaf people. In contrast, lowercase deaf typically refers to people who do not hear but are not participants in Deaf culture. For purposes of this lawsuit, uppercase "D" Deaf will refer to all d/Deaf individuals. For additional information, see Community and Culture—Frequently Asked Questions, The National Association of the Deaf at https://www.nad.org/resources/american-sign-language/communityand-culture-frequently-asked-questions (last visited December 8, 2021).

have no way to communicate. You have been rendered silent and invisible. This is the reality of Deaf individuals living in DIDD or DMHSAS group homes who have no communication supports. For a hearing person who speaks English, this would be the equivalent of someone taping your mouth shut for years and not allowing you to speak.

4. This action features two sets of Plaintiffs. The first set involves Plaintiffs Battle, Wilson, and Underwood, who receive services through DIDD. The second set involves Plaintiffs Helton and Downs, who receive services through DMHSAS.[2]

5. The State funds public intellectual and developmental disability services, mental health services, and substance abuse services for the benefit of its citizens.

6. DIDD is the State's agency with primary responsibility to administer statewide programs and services to Tennesseans with intellectual and developmental disabilities ("I/DD") using state and Federal funds.

7. The State and DIDD have failed to ensure that Plaintiffs Battle, Wilson, and Underwood, who are Deaf and communicate primarily in American Sign Language ("ASL"), receive equal access to and effective communication for DIDD's programs and services in direct violation of Title II of the ADA and Section 504.

8. DIDD administers a system of services for individuals with I/DD by contracting with licensed providers throughout the State. DIDD's I/DD service providers are supposed to offer choices to consumers that are "person-centered" and address the entire spectrum of needs in an individual's life, including, but not limited to, supported living housing ("group homes"), communication, habilitative, employment, emotional, safety, and behavioral needs.

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[2] In addition, DRT joins this action as a Plaintiff in its associational capacity.

9. However, the State and DIDD fail to deliver their programs and services to Plaintiffs Battle, Wilson, and Underwood in their primary language of ASL, thereby making DIDD's programs and services inaccessible to them, as detailed more fully herein.

10. As a result, Plaintiffs Battle, Wilson, and Underwood are subjected to discrimination by the State and DIDD by reason of their disability of deafness, and solely by reason of their disability of deafness, and are denied the benefits of DIDD's programs and services that are available to hearing individuals with I/DD.

11. The impact of the State and DIDD's failures on Plaintiffs Battle, Wilson, and Underwood has been devastating. Without effective communication, Plaintiffs Battle, Wilson, and Underwood have lived in isolation for years, unable to socialize, express concerns, or share how they are feeling. They are lonely and frustrated. They cannot access DIDD's I/DD services that would allow them to improve their quality of life. They have lost language and/or are at severe risk for losing language. This denial of effective communication and resulting loss of language also impedes the provision of effective treatment services.

12. DMHSAS is the State's agency with primary responsibility to administer statewide programs and services to Tennesseans with mental illness ("MI") and substance use disorders ("SUD") using state and Federal funds.

13. The State and DMHSAS have failed to ensure that Plaintiffs Helton and Downs, who are Deaf and communicate primarily in ASL, receive equal access and effective communication to DMHSAS' programs and services in direct violation of Title II of the ADA and Section 504.

14. DMHSAS administers a system of services for individuals with MI and SUD by contracting with licensed providers throughout the State. DMHSAS' licensees provide mental

health residential treatment in group homes, as well as other residential and community programs, where the ultimate goal is recovery and transitioning a person to independent living.

15. The State and DMHSAS fail to deliver their programs and services to Plaintiffs Helton and Downs in their primary language of ASL, thereby making DMHSAS' programs and services inaccessible to them, as detailed more fully herein.

16. As a result, Plaintiffs Helton and Downs are subjected to discrimination by reason of their disability of deafness, and solely by reason of their disability of deafness, and are denied the benefits of DMHSAS' programs and services that are available to hearing individuals with MI and SUD.

17. The impact of the State and DHMSAS' failures on Plaintiffs Helton and Downs has been devastating. Without the ability to effectively communicate, Plaintiffs Helton and Downs have lived in isolation for years, unable to socialize, express concerns, or share how they are feeling. They cannot access DMHSAS' programs and services that would allow them to improve their quality of lives. They cannot participate in critical mental health treatment, and, therefore, are unable to meet their goals that would allow them to transition out of group housing to independent living. They are lonely and desperately want to have someone with whom they can communicate. They have lost language and/or are at severe risk for losing language. This denial of effective communication and resulting loss of language also impedes the provision of effective treatment services and has resulted in re-institutionalization.

18. This action is brought to enforce the Federal requirements that Defendants' public services be equally accessible to Plaintiffs Battle, Wilson, Underwood, Helton, and Downs, and DRT's constituents; to ensure that they are not excluded from enjoyment of and use of the benefits, services, programs, and activities of Defendants by reason of their disabilities or solely

by reason of their disabilities; to ensure that Defendants give primary consideration to their requests when considering the types of auxiliary aids and services necessary to provide effective communication to them; and to ensure Defendants provide them with effective communication so that they may have equal access to Defendants' programs and services.

II. JURISDICTION AND VENUE

19. This action arises under the laws of the United States. Jurisdiction is conferred upon this court pursuant to 28 U.S.C. §§ 1331 and 1343.

20. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(1) because the State, DIDD, and DMHSAS' central offices are in the Middle District of Tennessee.

III. PARTIES

21. The State is one of the fifty (50) states that comprise the United States of America, with its central offices in Nashville, Tennessee.

22. The State receives Federal financial assistance as that term is used in Section 504.

23. The State oversees the administration of DIDD and DMHSAS.

24. The State has more than fifteen (15) employees.

25. DIDD is a department of the State with its central office in Nashville, Tennessee.

26. DIDD is the State's agency with primary responsibility to administer state and Federally funded services to individuals with I/DD.

27. DIDD receives Federal financial assistance as that term is used in Section 504.

28. DIDD has more than fifteen (15) employees.

29. DMHSAS is a department of the State with its central office in Nashville, Tennessee.

30. DMHSAS is the State's agency with primary responsibility to administer state and Federally funded services to individuals with MI and SUD.

31. DMHSAS receives Federal financial assistance as that term is used in Section 504.

32. DMHSAS has fifteen (15) or more employees.

33. Plaintiff Patrick Downs is Deaf and has MI. His primary language is ASL. He is eligible for and receives services administered and funded by DMHSAS through Eagle's Nest Transitional Living, Inc. He is a "qualified individual with a disability" and a person with a "disability" within the meaning of the applicable statutes and regulations, including 42 U.S.C. § 12131(2), 28 C.F.R. § 35.104, and 29 U.S.C. § 705(20). He lives in a DMHSAS-licensed group home in Nashville, Tennessee.

34. Plaintiff Christal Helton is Deaf and has MI. Her primary language is ASL. She is eligible for and receives services administered and funded by DMHSAS through Absolute Care, LLC. She is a "qualified individual with a disability" and a person with a "disability" within the meaning of the applicable statutes and regulations, including 42 U.S.C. § 12131(2), 28 C.F.R. § 35.104, and 29 U.S.C. § 705(20). She lives in a DMHSAS-licensed group home in Cookeville, Tennessee.

35. Plaintiff Dontay Battle is Deaf, has I/DD, and MI. His primary language is ASL. He is eligible for and receives services administered and funded by DIDD through Support Solutions of the Mid-South, LLC. He is a "qualified individual with a disability" and a person with a "disability" within the meaning of the applicable statutes and regulations, including 42 U.S.C. § 12131(2), 28 C.F.R. § 35.104, and 29 U.S.C. § 705(20). He lives in a DIDD-licensed group home in Memphis, Tennessee.

36. Plaintiff Necoas Wilson is Deaf, has I/DD, and MI. His primary language is ASL. He is eligible for and receives services administered and funded by DIDD through Loving Arms, LLC. He is a "qualified individual with a disability" and a person with a "disability" within the

meaning of the applicable statutes and regulations, including 42 U.S.C. § 12131(2), 28 C.F.R. § 35.104, and 29 U.S.C. § 705(20). He lives in a DIDD-licensed group home in Jackson, Tennessee.

37. Plaintiff David Underwood is Deaf, has I/DD, and MI. His primary language is ASL. He is eligible for and receives services administered and funded by DIDD through Reaching Visions Supports, LLC. He is a "qualified individual with a disability" and a person with a "disability" within the meaning of the applicable statutes and regulations, including 42 U.S.C. § 12131(2), 28 C.F.R. § 35.104, and 29 U.S.C. § 705(20). He lives in a DIDD-licensed group home in Antioch, Tennessee.

38. Plaintiff DRT is a Tennessee nonprofit corporation with its principal place of business in Nashville, Tennessee. DRT maintains regional offices in Nashville, Memphis, and Knoxville, Tennessee. It serves individuals with disabilities in all ninety-five (95) counties in Tennessee.

39. DRT is the Federally mandated P&A for the State. As such, DRT is authorized by multiple Federal statutes to, among other things, pursue administrative, legal, and other remedies on behalf of people with disabilities, including but not limited to, Deaf constituents who primarily communicate in ASL or another form of sign language, who receive services from DIDD and DMHSAS, and whose Federally protected rights are being violated.[3]

40. DRT joins this lawsuit separately in its associational capacity as the State's P&A system, in conjunction with the other named Plaintiffs, and on behalf of and to vindicate the rights of its Deaf constituents who are being denied effective communication and equal access to

[3] *See generally* 42 U.S.C.A. § 15043, 42 U.S.C. § 300d-53(k), 42 U.S.C. § 10805, and 29 U.S.C. § 794e(f).

DIDD and DMHSAS' programs and services, in violation of Title II of the ADA and Section 504.

IV. FACTUAL BACKGROUND RELATING TO COMMUNICATING WITH DEAF INDIVIDUALS WHO HAVE I/DD OR MI

ASL v. Written or Spoken English

41. The most common form of sign language in the United States is ASL.

42. ASL is a visual language. It is a complete, complex language that employs signs made by moving the hands combined with facial expressions and postures of the body: "For example, English speakers may ask a question by raising the pitch of their voices and by adjusting word order; ASL users ask a question by raising their eyebrows, widening their eyes, and tilting their bodies forward."[4]

43. ASL is not English in gestures. It has grammar and syntax that are completely different from English. When Deaf people are raised using ASL as their first or primary language, written English is a foreign language and is often acquired—if at all— incompletely and imperfectly. Deaf ASL users struggle to understand spoken English and often lack proficiency in written English.[5]

44. Many Deaf individuals are educated exclusively in Deaf schools where ASL is the primary form of communication as opposed to spoken or written English.

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[4] *American Sign Language*, National Institute on Deafness and Other Communication Disorders (NIDCD) (last visited December 8, 2021), https://www.nidcd.nih.gov/health/american-sign-language.

[5] Leslie Pertz, et al., *Addressing Mental Health Needs for Deaf Patients Through an Integrated Health Care Model,* 23 J. of Deaf Stud. and Deaf Educ. 240, 240 (2018).

Lip Reading

45. Lip reading is a technique of understanding speech by visually interpreting the movements of the lips, face, and tongue when normal sound is not available.

46. Lip reading only yields a 30% to 40% understanding under the best conditions, with issues such as poor lighting, facial hair, indirect line of sight, and masks making lip reading less effective.[6]

47. Lip reading skills also require a fluency in spoken English, which most Deaf individuals do not have. Lip reading skills are lower for individuals who are born Deaf or who lose their hearing suddenly rather than progressively.[7]

48. Deaf individuals may act as if they understand lip reading in order to avoid embarrassment or stigma.[8]

Written Communication with Deaf Individuals with I/DD

49. Studies have shown that Deaf individuals with no cognitive impairments have on average only a fourth-grade median reading level in English.[9] Deaf individuals with I/DD generally have a lower English reading level than their Deaf peers without I/DD.

50. Using written English to communicate with Deaf individuals with I/DD is generally less effective than with other Deaf individuals without I/DD or with hearing individuals with I/DD.

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[6] Kathleen J. Richardson, *Deaf Culture: Competencies and Best Practices*, 39 The Nurse Practitioner Issue 5, 20, 25 (May 12, 2014).
[7] Nicholas A. Altieri, et al., *Some Normative Data on Lip-Reading Skills (L)*, J. Acoustical Soc'y Am., Jul. 2011, at 1, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3155585.
[8] Richardson, *supra* note 6 at 25.
[9] Connie Mayer, *What Really Matters in the Early Literacy Development of Deaf Children,* 12 J. Deaf. Stud. & Educ. 411 (2007).

Written Communication with Deaf Individuals with MI

51. Mental health treatment relies on interpersonal communication between the mental health service provider and the mental health patient to build a foundation of trust and understanding. Because of this, a communication-driven relationship is formed between a mental health provider and a mental health patient.[10]

52. Mental health providers may try to communicate with Deaf individuals by having them write in English or read lips.[11] This requires Deaf individuals to function and attempt to communicate in a language—English—in which they are not competent and, thus, halts the development of a communication-driven relationship.[12] Attempting to communicate in written English or lip reading during mental health treatment, during a mental health crisis, or group therapy prohibits the development of the communication-driven, therapeutic relationship and is not effective for Deaf individuals who primarily communicate in ASL.[13]

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[10] Pertz, *supra* n. 5, at 245 ("Language concordance and cultural competency are key components to ensuring good patient-provider relationships...Effective communication is a crucial element in mental health care, not only for history gathering and accurate diagnosis but also to ensure good treatment adherence and to obtain desired treatment goals and outcomes (McKee, Moreland, et al., 2015). Furthermore, concordance is critical since this helps overcome potential medical mistrust. (Fellinger et al., 2012; Hauser, O' Hearn, McKee, Steider, & Thew, 2010; McKee, Schlehofer, & Thew, 2013; Moreland et al., 2015).").

[11] Michael John Gournaris, Ph.D, *et al.*, *Promising Practices of Statewide Mental Health Models Serving Consumers who are Deaf: How to Advocate for Your Model in Your Home State*, 43 Jadara 151, 152 (Nov. 2019).

[12] Washington, DC: National Association of State Mental Health Program Directors, *Persons Who Are Deaf and Mentally Ill,* adapted from Critchfield, A.B., *Meeting the Mental Health Needs of Persons Who Are Deaf,* 2 (2002).

[13] *See* Neil Glickman, *Do You Hear Voices? Problems in Assessment of Mental Status in Deaf Persons With Severe Language Deprivation,* 12 J. of Deaf Stud. and Deaf Educ. 127, 129 (2007) ("The easiest and most glaring mistake [when performing mental health examinations of Deaf persons] is to draw conclusions about mental illness on the basis of the spoken or written language skills of the deaf person.").

53. Deaf individuals who communicate primarily in ASL require mental health services to be delivered by an ASL-fluent provider[14] or, in the alternative, through a sign language interpreter qualified in mental health interpreting (also known as a qualified mental health interpreter or "QMHI").

Connection to Other Deaf Individuals and ASL Users

54. It is imperative for Deaf individuals, including those with I/DD and MI, to maintain strong ties to the Deaf community and to individuals who communicate in ASL for socialization, and so that they can maintain their skills in ASL.[15]

55. Because Deaf individuals often have hearing parents, Deaf people tend to look to peers and other social counterparts for societal learning and to feel connected to the world.[16]

56. If individuals whose primary language is ASL do not communicate frequently in ASL with individuals who are also sign-fluent, their ability to communicate in ASL can diminish. Consequently, they will be at risk of losing their abilities to communicate in ASL and, therefore, be left without any language in which to effectively communicate.

57. This inability to communicate can lead to feelings of isolation, frustration, and depression, as well as neglect, abuse, inadequate health care, and an exacerbation of existing MI

[14] *See* Pertz, *supra* n. 5, at 241 ("Deaf patients not only prefer direct access to ASL fluent mental health care providers, but fare better when given this opportunity (Landsberger et al., 2013; Pollard et al., 2014).").

[15] Many individuals who are Deaf and who use ASL consider themselves a part of Deaf Culture, which is a unique cultural and linguistic minority whose members use sign language as their primary language and share life experiences, including their everyday talk, their shared myths, their art, and the lessons they teach one another. *See* Critchfield, *People Who Are Deaf & Mentally Ill, supra* note 12 at p. 1.

[16] *Id.* at p. 3.

symptoms.[17] It robs a Deaf person of their language and gradually and completely isolates them from the world around them.

V. FACTUAL BACKGROUND RELATING TO DIDD'S PROGRAMS AND SERVICES

DIDD Operations

58. The State has created an extensive, statewide program to provide services and supports to people with I/DD. This program is administered by DIDD using state and Federal funds.

59. The State has empowered DIDD, through its commissioner, to "have the authority to receive, administer, allocate, disburse and supervise any grants and funds from whatever sources, including, but not limited to, the federal, state, county and municipal governments on a state, regional, county or any other basis, with respect to any programs or responsibilities . . . assigned to the department of intellectual and developmental disabilities by law, regulation or order." Tenn. Code Ann. § 4-3-2707.

60. The general functions of DIDD are to "coordinate, set standards for, plan for, monitor, and promote the development and provision of services and supports to meet the needs of persons with intellectual and developmental disabilities through the public and private sectors in this state…." Tenn. Code Ann. § 4-3-2701.

61. DIDD's vision is to "Support all Tennesseans with intellectual and developmental disabilities to live the lives they envision for themselves."[18]

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[17] *See* K. Shepard & T. Badger*, The Lived Experience of Depression Among Culturally Deaf Adults,* 17 J. of Psych. & Ment. Health Nurs. 783 (2010).

[18] *Department of Intellectual and Developmental Disabilities: About Us,* TN.GOV, https://www.tn.gov/didd/about.html (last visited December 8, 2021).

DIDD's Oversight of Its Licensed Providers

62. DIDD's licensed providers support service recipients with I/DD ("consumers"), including individuals who are Deaf and whose primary language is ASL ("Deaf consumers").

63. The licensed providers' supports include, but are not limited to, providing DIDD consumers with group homes with direct service providers ("staff"), habilitative services, safety services, transportation, assistance with making medical and mental health appointments, assistance with taking medication, and the provision of telephones.

64. DIDD publishes a Provider Manual that sets forth directives to its licensed providers.[19]

65. DIDD has not promulgated any relevant regulations addressing compliance with the ADA and Section 504 in the provision of I/DD services to Deaf consumers.

66. DIDD has not issued specific policies, procedures, or guidance on ensuring accessibility for Deaf consumers.

67. DIDD has not adequately instructed its licensees regarding their obligations to ensure that I/DD services are accessible to Deaf consumers, including through effective communication.

68. DIDD has not issued any directives to DIDD licensees explaining that they have an affirmative obligation to provide reasonable modifications to Deaf consumers, and that they must give primary consideration to the Deaf consumer's preferred form of communication.

69. DIDD has not conducted or required its licensed providers to have trainings on accessibility and effective communication specifically for Deaf consumers.

70. DIDD has not provided sufficient funding to secure supports needed for Deaf consumers to have equal access to and effective communication for its programs and services.

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[19] *See State of Tennessee Department of Intellectual and Development Disabilities Provider Manual*, effective March 15, 2014 ("DIDD Provider Manual").

DIDD's Person-Centered Practice and Planning

71. DIDD's mission is to "become the nation's most person-centered and cost effective state support system for people with intellectual and developmental disabilities."[20]

72. DIDD uses a person-centered practice ("PCP") in its delivery of I/DD services and programs. "Person Centered Practices (PCP) is an exponent for people receiving supports. PCP acknowledges that those supported will have better-quality lives; by means of active social roles, community connections, enhanced planning and significant influence with independent decision-making."[21]

73. PCP encompass all areas of a DIDD consumer's life. Some of the person-centered services DIDD provides to its consumers include, but are not limited to, "occupational therapy, physical therapy, nutrition, nursing, mobility and orientation (not an inclusive list) which are modified for this specialized population and include chronic and maintenance care. Also covered are services that are unique to this population such as specialized behavior services and assistive technology."[22]

74. PCP is the process that is used to develop a person-centered plan for consumers.

75. DIDD requires person-centered planning and supports that focus on:

1. Who the person is.
2. What the person wants from life, what a person may want to learn.
3. How to accomplish the person's desired outcomes.
4. What is important to the person including things that help a person feel happy, satisfied, and content and fulfilled.
5. What is important for the person which includes health and safety.

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[20] *Department of Intellectual and Developmental Disabilities: About Us,* TN.GOV, https://www.tn.gov/didd/about.html (last visited December 8, 2021).
[21] *Department of Intellectual and Developmental Disabilities: Accreditation and Person Centered* Practices, TN.GOV, https://www.tn.gov/didd/divisions/accreditation---person-centered-practices/person-centered-practices.html (last visited January 12, 2022).
[22] *Department of Intellectual and Developmental Disabilities: Clinical Services*, TN.GOV, https://www.tn.gov/didd/divisions/health-services.html (last visited January 12, 2022).

DIDD Provider Manual at 3.3.

76. Person-centered plans also address a DIDD consumer's communication needs.

77. A DIDD consumer's person-centered plan must be revised on a regular basis at a meeting attended by the DIDD consumer's Circle of Support. The Circle of Support assists the person receiving services and supports with the planning process and may include the DIDD consumer, the DIDD consumer's provider agency, the DIDD consumer's Independent Services Coordinator, the DIDD consumer's medical and therapeutic providers, and others who support the DIDD consumer. *Id.* at 3.3-3.4.

78. Person-centered planning meetings are complicated and lengthy and involve future planning, goal setting, and decision-making on the part of the DIDD consumer.

79. PCP involves understanding each DIDD consumer's unique way of communicating so that programs and services can be delivered in a way that the DIDD consumer can understand and receive the benefits thereof.

80. Plaintiffs Battle, Wilson, and Underwood communicate in a language. That language is ASL. However, the State and DIDD fail to provide Plaintiffs Battle, Wilson, and Underwood with person-centered planning and supports because they fail to provide their planning, services, and programs in ASL. Plaintiffs Battle, Wilson, and Underwood do not receive effective communication for DIDD's programs and services because they are not delivered in their primary language of ASL.

81. The State and DIDD also do not have an adequate network of qualified providers who are sign fluent, familiar with Deaf consumers, and have sufficient capacity to meet the

communication needs of Plaintiffs Battle, Wilson, and Underwood to the same extent that existing providers meet the needs of hearing consumers.

82. Plaintiffs Battle, Wilson, and Underwood also need access to group homes that meet their communication needs. The State and DIDD do not provide for group homes that are specifically set up for Deaf consumers.

VI. FACTUAL ALLEGATIONS REGARDING THE DIDD PLAINTIFFS

Plaintiff Dontay Battle

83. Plaintiff Dontay Battle ("Mr. Battle") is a resident of Shelby County, Tennessee.

84. Mr. Battle is 20 years old, profoundly Deaf, and communicates primarily in ASL. He lives in a group home run by DIDD-licensed provider Support Solutions of the Mid-South, LLC ("Support Solutions").

85. Mr. Battle has never had a communication evaluation given by a qualified individual who is fluent in ASL and who has experience working with Deaf individuals with I/DD.

86. Prior to receiving services through DIDD, Mr. Battle was in the custody of Tennessee's Department of Children's Services (DCS) and experienced significant childhood trauma, abuse, and neglect.

87. Mr. Battle graduated from White Station High School in Memphis in May 2020, where he received his education with the daily assistance of ASL sign language interpreters. Mr. Battle also received job training in food preparation while he was in high school, which he enjoyed.

88. Mr. Battle wants to have a job, learn to drive, and be around other Deaf people. Mr. Battle also wants to build relationships with his peers in the community and be more independent.

89. Despite Mr. Battle's desires to be a productive member of his community, his typical day at his DIDD licensed provider home consists of getting out of bed, drinking water, taking his medication, watching television, and sleeping. He sees his Deaf friends only about once a month and rarely communicates in his native language of ASL.

90. Support Solutions recognizes Mr. Battle's need communicate primarily in ASL and to have his services delivered in ASL. According to Mr. Battle's person-centered support plan, dated October 8, 2020, "It is important for Dontay to be supported by understanding his communication style...ASL is his preferred way to communicate and should be used if at all possible...Dontay may require someone that knows ASL."

91. Additionally, in an email dated February 12, 2020, from Stephanie Stacy, Support Solutions Quality/IM Specialist, to Support Solutions Program Manager, Octavia Macklin, Ms. Stacy urged Mr. Battle's staff to learn ASL. She wrote: "Also don't forget to tell your staff about our ASL class. [Mr. Battle's] ability to communicate with staff may decrease his frustration and maybe the elopements."

92. Mr. Battle's need to communicate in ASL was also confirmed by an audiologist. Mr. Battle underwent a hearing evaluation at Professional Audiological Services in Memphis, Tennessee, on or about March 18, 2020. The audiologist, Loretta Coltharp, confirmed that Mr. Battle is Deaf and has no word discrimination ability. She recommended that all of Mr. Battle's staff receive sign language training to be able to communicate with him.

93. Despite these directives, Mr. Battle does not have staff in his home who know ASL, nor have staff received training on ASL. In addition, his roommate is hearing and does not sign. Mr. Battle is forced to teach his staff some basic signs in an attempt to communicate with them.

94. Mr. Battle's staff attempts to communicate with him through lip reading and written notes in English, which is not his primary nor preferred language. This causes Mr. Battle to become frustrated. Mr. Battle needs to communicate in ASL either directly with someone who is fluent in ASL or through a qualified sign language interpreter.

95. When Mr. Battle attempts to communicate with his staff using ASL, staff has repeatedly noted that they do not understand what he is trying to "say."

96. In addition, Mr. Battle is not provided with a qualified sign language interpreter for his person-centered planning meetings; therefore, he cannot participate in person-centered planning process, nor does he fully understand the information set forth therein.

97. Mr. Battle does not routinely get qualified sign language interpreters for medical appointments. Support Solutions staff do not call ahead of time to ensure that his physicians and medical providers secure a qualified sign language interpreter for his appointments. As a result, Mr. Battle cannot effectively and meaningfully participate in his own health care.

98. This lack of effective communication has led to frustration and exacerbation of mental health issues. For example, Mr. Battle has eloped at least three times since entering DIDD services and has had at least one in-patient stay at a psychiatric hospital.

99. In February 2020, Mr. Battle was admitted to Lakeside Behavioral Health and diagnosed with depression, aggression, psychosis, and suicidal ideations. In his Discharge Safety Plan, the discharging physician advised that if Mr. Battle had suicidal ideations or became depressed that he could talk to staff at his group home. However, this treatment plan is impossible to carry out because none of Mr. Battle's staff know ASL nor could they communicate effectively with him during a mental health crisis.

100. Mr. Battle does not receive his mental health services through a mental health provider who is ASL fluent or with the assistance of a QMHI.

101. In the Lakeside Behavior Health Discharge Safety Plan, Lakeside also provided Mr. Battle with the phone number to a suicide prevention hotline should he have further suicidal ideations. However, Mr. Battle is unable to make a phone call to this hotline in a potential life or death situation because he does not have a videophone ("VP") in his home.

102. A VP enables a Deaf person who signs to communicate with a hearing person who does not sign through a video relay service ("VRS"). A Deaf person can use their VP to connect visually with a VRS interpreter who then connects by phone to a hearing person. When the Deaf person signs, the interpreter voices the signs to the hearing person. When the hearing person speaks, the interpreter signs to the Deaf person.

103. Deaf persons who sign can also make calls on a VP directly to another ASL user. This is known as a "point-to-point" call. The Deaf person and the ASL user can see each other on the VP and sign directly to each other.

104. Support Solutions recognizes the need for Mr. Battle to have a VP at his group home. In an email from Simione Jenkins, BlueCare Tennessee/ECF Choices Support Coordinator, to Octavia Macklin, dated March 3, 2020, Ms. Jenkins requested that Ms. Macklin assist Mr. Battle with completing an application which would allow him to receive free VP services through Sorenson Video Relay Service. Ms. Jenkins followed up with Ms. Macklin in another email dated April 29, 2020, to see if the VP request had been made.

105. Despite this, Mr. Battle does not have a VP in his group home. He is unable to make phone calls independently, cannot access the suicide prevention line, and is unable to

independently and confidentially report any possible instances of abuse and neglect. This puts him at greater risk for serious harm, injury, and death.

106. Mr. Battle also does not have other assistive technology ("AT") necessary for Deaf individuals, including, but not limited to, a bed shaker alarm, and a visual, flashing fire alarm in his home. In the event of a fire, this means that Mr. Battle is at greater risk of serious harm, injury, or death than his hearing roommate.

107. Due to the State and DIDD's lack of communication supports, Mr. Battle is left vulnerable, lonely, and lives in near isolation. Since entering DIDD care, his quality of life has deteriorated. Instead of actively enjoying life in the community as a young, 20-year-old man, he is depressed and, on most days, his only noteworthy activities are eating and sleeping. He has nobody to talk to or interact with in a meaningful way.

108. Mr. Battle is at grave risk of a decline in his ability to use ASL due to language deprivation and isolation.

109. The State and DIDD have failed and are failing to provide Mr. Battle with effective communication and person-centered supports, including but not limited to:

a. an appropriate communication evaluation given by a person who is fluent in ASL and who has experience working with Deaf individuals with I/DD;
b. programs, services, and activities offered with signing staff or qualified sign language interpreters;
c. qualified sign language interpreters for person-centered planning meetings;
d. qualified mental health sign language interpreters or sign-fluent mental health providers for mental health treatment;

e. qualified sign language interpreters or sign-fluent providers for rehabilitative, habilitative, behavioral, occupational, vocational, community, and other services;

f. coordination of and scheduling qualified sign language interpreters for medical appointments;

g. provision of group homes that are specifically set up to meet Deaf consumers' communication needs, including, but not limited to, sign-fluent staff and necessary AT for Deaf individuals, such as VPs, flashing fire alarms, and bed shaker alarms;

h. ongoing, strong connections with the Deaf community, including, but not limited to, sign-fluent roommates and continued ASL exposure; and

i. person-centered planning and supports.

110. The State and DIDD fail to deliver its programs and services to Plaintiff Battle in his primary language of ASL, thereby making DIDD's programs and services inaccessible to him.

111. As a result of the State and DIDD's failures to provide effective communication to Mr. Battle, he is being denied equal access to DIDD's programs and services.

112. Because he cannot access the programs and services that hearing consumers can, Mr. Battle is currently placed in a more restrictive environment than his hearing peers and is at an increased risk for institutionalization.

113. As a result of the failures of the State and DIDD, Mr. Battle has suffered and continues to suffer from emotional distress, isolation, stigma, communication neglect, and discriminatory conduct.

Plaintiff Necoas Wilson

114. Plaintiff Necoas Wilson ("Mr. Wilson") is a resident of Madison County, Tennessee.

115. Mr. Wilson is 37 years old. He is profoundly Deaf and communicates primarily in ASL. He has ID, MI, and Epilepsy.

116. Mr. Wilson lives at a DIDD-licensed group home run by Loving Arms, LLC ("Loving Arms") in Jackson, Tennessee.

117. Mr. Wilson graduated from the Tennessee School for the Deaf ("TSD") in 2006.

118. Mr. Wilson is very social and would like to make more friends. It is very frustrating for him when he cannot communicate with people and when people do not understand what he is trying to communicate.

119. Mr. Wilson has never had a communication evaluation given by a qualified individual who is fluent in ASL and who has experience working with Deaf individuals with I/DD.

120. According to Mr. Wilson's 2022 person-centered support plan, he requires staff support for taking his medication, performing household chores, and with money management, among other things. Mr. Wilson also requires staff "support with managing my finances and ensuring I do not become exploited." All of these supports require effective communication.

121. Mr. Wilson's 2022 person-centered support plan recognizes that he communicates in ASL, and that it is beneficial for staff to know sign language so that he can understand and communicate with them.

122. Despite these directives, no staff at Mr. Wilson's group home know ASL, nor has Mr. Battle's staff received sign language training. As a result, staff cannot effectively communicate with him and provide him with his person-centered supports. Thus, Mr. Wilson is at great risk for financial, emotional, and other types of exploitation.

123. Staff attempt to communicate with Mr. Wilson via gestures, lip reading, and written notes. This is not effective communication for him. Mr. Wilson needs to communicate in ASL

either directly with someone who is fluent in ASL or through a qualified sign language interpreter.

124. Mr. Wilson does not routinely get qualified sign language interpreters for medical appointments. Staff do not call ahead of time to ensure that his physicians and medical providers secure a qualified sign language interpreter for his appointments. As a result, Mr. Wilson cannot effectively and meaningfully participate in his own health care.

125. According to Mr. Wilson's 2021 person-centered plan, he also has suicidal ideations. Mr. Wilson is unable to communicate these thoughts of self-harm to his staff during a mental health crisis because they do not know ASL.

126. For example, On May 17, 2021, Mr. Wilson's staff wrote in his shift notes that Mr. Wilson was having mental health symptoms. Mr. Wilson attempted to communicate with staff. Staff noted that Mr. Wilson was "angry" and "in a mood," so staff "talked" to him and "advised" him to pray about it and read his Bible. Mr. Wilson cannot understand when staff "talks" to him because he is Deaf.

127. A day later, on May 18, 2021, Mr. Wilson was still experiencing a mental health crisis and attempted to communicate with staff. After trying to communicate with him in oral English, staff once again advised him to pray and "quit worrying so much." Mr. Wilson was unable to communicate with staff during a mental health crisis, thereby subjecting him to an increased risk of danger, harm, or even death.

128. Mr. Wilson wants to work, be as independent as possible, and be a productive member of society. However, the lack of communication at his group home prevents him from receiving the habilitative services needed to achieve these goals.

129. Mr. Wilson does not receive his mental health care through a sign-fluent provider or QMHI.

130. Mr. Wilson is not provided with a qualified sign language interpreter for his person-centered planning meetings; therefore, he cannot participate in person-centered planning process, nor does he fully understand the information set forth therein.

131. The lack of communication in Mr. Wilson's home has been frustrating for him.

132. Mr. Wilson is in grave risk of a decline in his ability to use ASL due to language deprivation and isolation.

133. The State and DIDD have failed and are failing to provide Mr. Wilson with effective communication and person-centered supports, including but not limited to:

a. an appropriate communication evaluation given by a person who is fluent in ASL and who has experience working with Deaf individuals with I/DD;

b. programs, services, and activities offered with signing staff or qualified sign language interpreters;

c. qualified mental health sign language interpreters or sign-fluent mental health providers for mental health treatment;

d. qualified sign language interpreters or sign-fluent providers for rehabilitative, habilitative, behavioral, occupational, vocational, community, and other services;

e. coordination of and scheduling qualified sign language interpreters for medical appointments;

f. provision of group homes that are specifically set up to meet Deaf consumers' communication needs, including, but not limited to, sign-fluent staff and necessary AT for Deaf individuals, such as VPs, flashing fire alarms, and bed shaker alarms;

g. ongoing, strong connections with the Deaf community, including, but not limited to, sign-fluent roommates and continued ASL exposure; and

h. person-centered planning and supports.

134. The State and DIDD fail to deliver its programs and services to Plaintiff Wilson in his primary language of ASL, thereby making DIDD's programs and services inaccessible to him.

135. As a result of the State and DIDD's failures to provide effective communication to Mr. Wilson, he is being denied equal access to DIDD's programs and services.

136. Because he cannot access the programs and services that hearing consumers can, Mr. Wilson is currently placed in a more restrictive environment than his hearing peers and is at an increased risk for institutionalization.

137. As a result of the failures of the State and DIDD, Mr. Wilson has suffered and continues to suffer from emotional distress, isolation, stigma, communication neglect, and discriminatory conduct.

Plaintiff David Underwood

138. Plaintiff David Underwood is a resident of Davidson County, Tennessee.

139. Mr. Underwood is 53 years old and resides in a DIDD-licensed group home operated by Reaching Visions Supports, LLC ("RVS").

140. Mr. Underwood is profoundly Deaf and communicates primarily in ASL. He also has ID and MI.

141. Mr. Underwood graduated from the TSD in the 1980s.

142. Mr. Underwood has never had a communication evaluation given by a qualified individual who is fluent in ASL and who has experience working with Deaf individuals with I/DD.

143. According to Mr. Underwood's 2019 person-centered plan, Mr. Underwood's primary language is sign language. He uses sign language to communicate and can communicate well with someone who knows sign. Mr. Underwood's person-centered plan also states that he has difficulty understanding written English. He uses signs to communicate when he is ill. He also enjoys being around other Deaf people who know his language.

144. According to Mr. Underwood's person-centered plan, staff who work with Mr. Underwood who are not able to sign "must be willing to learn his form of sign language."

145. Despite these directives in Mr. Underwood's person-centered plan, none of Mr. Underwood's staff know ASL. He has no opportunity to use ASL in his group home. Staff attempts to communicate with Mr. Underwood via lip reading or written notes or English on Mr. Underwood's iPad, which is often not effective for Mr. Underwood. Mr. Underwood needs to communicate in ASL either directly with someone who is fluent in ASL or through a qualified sign language interpreter.

146. For example, in one of his daily notes, Mr. Underwood's staff wrote that he became frustrated because staff was not understanding his signs. Staff asked him to write down what he was asking on an iPad, but they still could not understand his wants or needs. As a result, he became upset. Staff could not redirect him because they cannot effectively communicate with him.

147. In 2019, Mr. Underwood was provided speech therapy services in his home. His speech therapist was not sign fluent and communicated with him through written notes or via English on his iPad. These speech therapy services ended in 2019 because Mr. Underwood had "maximized the benefits" of the services. In fact, Mr. Underwood received no benefit from these speech therapy services as they were not provided in ASL.

148. Mr. Underwood does not routinely get qualified sign language interpreters for his medical, therapy, and dental appointments. Instead of coordinating qualified sign language interpreters for his medical appointments, Mr. Underwood's staff, who do not know ASL, often accompany him to these appointments and tell Mr. Underwood's providers about his medical issues, without ever having consulted with Mr. Underwood. This compromises his right to individual choice and privacy. Therefore, Mr. Underwood does not have effective communication during these appointments and cannot meaningfully participate in his own health care.

149. Mr. Underwood is not provided with a qualified sign language interpreter for his person-centered planning meetings; therefore, he cannot participate in a person-centered planning process, nor does he fully understand the information set forth therein.

150. Mr. Underwood does not have a VP and, therefore, cannot make independent phone calls in his primary language of ASL, including phone calls to report emergencies or instances of abuse and neglect, putting him at greater risk for serious harm or injury.

151. Due to the State and DIDD's failure to provide effective communication to Mr. Underwood, Mr. Underwood has lost language. In the early 2000s, Mr. Underwood was able to expressively communicate in ASL and hold expressive conversations in ASL with other people who know ASL. Today, it is difficult for him to do this, and he may "copy sign," or mimic others' signs, instead of expressively signing to them in ASL.

152. This decline in language has greatly diminished Mr. Underwood's quality of life, including his ability to communicate and relate to others, express his wants and needs, participate in activities, and make friends.

153. Mr. Underwood spends most of his days isolated in his home with no way to communicate.

154. The State and DIDD have failed and are failing to provide Mr. Underwood with effective communication and person-centered supports, including but not limited to:

a. an appropriate communication evaluation given by a person who is fluent in ASL and who has experience working with Deaf individuals with I/DD;

b. programs, services, and activities offered with signing staff or qualified sign language interpreters;

c. qualified mental health sign language interpreters or sign-fluent mental health providers for mental health treatment;

d. qualified sign language interpreters or sign-fluent providers for rehabilitative, habilitative, behavioral, occupational, vocational, community, and other services;

e. coordination of and scheduling qualified sign language interpreters for medical appointments;

f. provision of group homes that are specifically set up to meet Deaf consumers' communication needs, including, but not limited to, sign-fluent staff and necessary AT for Deaf individuals, such as VPs, flashing fire alarms, and bed shaker alarms;

g. ongoing, strong connections with the Deaf community, including, but not limited to, sign-fluent roommates and continued ASL exposure; and

h. person-centered planning and supports.

155. The State and DIDD fail to deliver its programs and services to Plaintiff Underwood in his primary language of ASL, thereby making DIDD's programs and services inaccessible to him.

156. As a result of the State and DIDD's failures to provide effective communication to Mr. Underwood, he is being denied equal access to DIDD's programs and services.

157. Because he cannot access the programs and services that hearing consumers can, Mr. Underwood is currently placed in a more restrictive environment than his hearing peers and is at an increased risk for institutionalization.

158. As a result of the failures of the State and DIDD, Mr. Underwood has suffered and continues to suffer from emotional distress, communication neglect, loss of language, isolation, stigma, and discriminatory conduct.

VII. FACTUAL ALLEGATIONS RELATING TO THE STATE AND DIDD'S FAILURE TO PROVIDE EFFECTIVE COMMUNICATION FOR AND EQUAL ACCESS TO ITS PROGRAMS AND SERVICES TO PLAINTIFFS BATTLE, WILSON, AND UNDERWOOD

Defendants the State and DIDD Are Failing to Provide Person-Centered Planning for Plaintiffs Battle, Wilson, and Underwood

159. The State and DIDD are failing to provide person-centered planning to Plaintiffs Battle, Wilson, and Underwood despite the fact that DIDD mandates a "Person Centered Practice" for all of its consumers.

160. A DIDD "Person Centered Practice" begins with effective communication for consumers.

161. Mr. Battle, Mr. Wilson, and Mr. Underwood communicate primarily in ASL. Despite this, none of their planning meetings, programs, or services are delivered in ASL.

162. Without planning and delivery of programs and services in ASL, Mr. Battle, Mr. Wilson, and Mr. Underwood get minimal if any benefit from these programs and services. They cannot access the person-centered planning process and implementation thereof.

163. Without effective communication for Mr. Battle, Mr. Wilson, and Mr. Underwood, Defendants the State and DIDD cannot ascertain and implement the key components of the person-centered planning process, including, but not limited to, "Who the person is?"; "What the person wants from life?"; "How to accomplish the person's desired outcomes?"; and, "What is important to the person including things that help a person feel happy, satisfied, and content and fulfilled?" *See DIDD Provider Manual* at 3.3.

164. Without effective communication, Mr. Battle, Mr. Wilson, and Mr. Underwood do not have operative person-centered plans.

165. Without effective communication, Mr. Battle, Mr. Wilson, and Mr. Underwood do not receive equal access to Defendant DIDD's services and programs.

166. Without effective communication, Mr. Battle, Mr. Wilson, and Mr. Underwood are in a more restrictive environment than their hearing peers and are at greater risk of institutionalization.

167. These failures on the part of the State and DIDD are causing Plaintiffs Battle, Wilson, and Underwood significant and ongoing harm and discrimination as detailed herein.

The State and DIDD are Failing to Provide Necessary Auxiliary Aids and Services to Ensure Effective Communication for Plaintiffs Battle, Wilson, and Underwood and Denying Them Equal Access to Their Services and Programs

168. The State and DIDD have failed and are failing to provide necessary auxiliary aids and services to Plaintiffs Battle, Wilson, and Underwood to ensure effective communication for and

an equal opportunity to participate in, and enjoy the benefits of, the services, programs, and activities of DIDD.

169. The State and DIDD have failed and are failing to provide:

a. appropriate communication evaluations given by a person who communicates in ASL and who has experience working with Deaf individuals with I/DD;
b. programs, services, and activities offered with signing staff or qualified sign language interpreters;
c. qualified sign language interpreters for person-centered planning meetings;
d. qualified mental health sign language interpreters or sign-fluent mental health providers for mental health treatment;
e. qualified sign language interpreters or sign-fluent providers for rehabilitative, habilitative, behavioral, occupational, vocational, community, and other services;
f. coordination of and scheduling qualified sign language interpreters for medical appointments;
g. provision of group homes that are specifically set up to meet Deaf consumers' communication needs, including, but not limited to, sign-fluent staff and necessary AT for Deaf individuals, such as VPs, flashing fire alarms, and bed shaker alarms;
h. ongoing, strong connections with the Deaf community, including, but not limited to, sign-fluent roommates and continued ASL exposure; and
i. person-centered planning and supports.

170. The State and DIDD also do not have an adequate network of qualified providers that have sign fluent staff, are familiar with Deaf consumers, and have sufficient capacity to meet the

communication needs of Deaf consumers to the same extent that existing providers meet the needs of hearing consumers.

171. Plaintiffs Battle, Wilson, and Underwood are not receiving services, including but not limited to, habilitative services in group homes they need to improve their communication. They are being denied one of the most basic forms of habilitation— learning to communicate effectively with the world around them, including staff and peer interaction and support.

172. Plaintiffs Battle, Wilson, and Underwood live in group homes where they cannot communicate with peers or staff. At that time and continuing to the present, the State and DIDD do not provide for group homes that are accessible for Deaf consumers and meet their communication needs.

173. The State and DIDD are also failing to give primary consideration to the requests of Plaintiffs Battle, Wilson, and Underwood when choosing auxiliary aids or services to provide in violation of 28 C.F.R. § 35.160.

174. The State and DIDD's failure to provide Plaintiffs Battle, Wilson, and Underwood with effective communication are violations of the mandates set forth in Title II of the ADA and Section 504.

175. Because the State and DIDD do not provide effective communication to Plaintiffs Battle, Wilson, and Underwood, they are denied equal access to DIDD's programs and services in violation of Title II of the ADA and Section 504.

176. These failures on the part of the State and DIDD are causing Plaintiffs Battle, Wilson, and Underwood significant and ongoing harm as detailed herein.

Plaintiffs Battle, Wilson, and Underwood are Harmed by the State and DIDD's Failure to Provide Effective Communication and Equal Access to I/DD Services and Programs

177. The lack of equal access to DIDD's programs and services for the Plaintiffs Battle, Wilson, and Underwood has damaging effects on them.

178. Without effective communication and delivery of services in ASL, Plaintiffs Battle, Wilson, and Underwood cannot access DIDD's programs and services that are supposed to enrich their quality of lives.

179. Lack of communication affects every area of person-centered planning supports, including safety. Lack of access to report abuse, lack of understanding emergency evacuation directions, and the inability to communicate symptoms such as pain, discomfort, or the side effects of medications, puts the health and safety of Plaintiffs Battle, Wilson, and Underwood at risk.

180. As a result of the failures on behalf of the State and DIDD, Plaintiffs Battle, Wilson, and Underwood have suffered and are suffering significant harm. They have been rendered silent and invisible because they cannot communicate in their native language. They have lost language and/or are at graver risk of losing language. They have suffered and continue to suffer emotional distress, communication neglect, isolation, stigma, and have been subjected to discriminatory conduct.

VIII. FACTUAL BACKGROUND RELATING TO DEFENDANT DMHSAS' PROGRAMS AND SERVICES

DMHSAS Operations

181. The State has created an extensive, statewide program to provide services and supports to people with MI and SUD. This program is administered by DMHSAS using state and federal funds.

182. DMHSAS "serves as the state's mental health and developmental disabilities authority and is responsible for system planning, setting policy and quality standards, system monitoring and evaluation, disseminating public information and advocacy for persons of all ages who have mental illness, [and] serious emotional disturbance..." Tenn. Code Ann. § 33-1-201.

183. DMHSAS "administers services for people of all ages living with mental illness, co-occurring disorders, or serious emotional disturbances. Services include housing, crisis services, suicide prevention, and peer recovery." [23]

184. The State created DMHSAS "to develop and maintain a system of care that provides a comprehensive array of quality prevention, early intervention, treatment, habilitation and rehabilitation services and supports that are geographically available, equitably and efficiently allocated statewide, allowing people to be in their own communities in settings, based on the needs and choices of individuals and families served." Tenn. Code Ann. § 33-2-102(a).

185. DMHSAS must, in part, "(1) Establish and sustain a broad range and scope of flexible services and supports across the domains of residential living, working, learning, community participation, and family support, including crisis, respite and other emergency services, that help

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[23] *Department of Mental Health and Substance Abuse Service: Mental Health Services,* TN.GOV, https://www.tn.gov/behavioral-health.html (last visited December 8, 2021).

service recipients maintain respected and active positions in the community.…" Tenn. Code Ann. § 33-2-102(b)(1).

186. DMHSAS' mission is "[c]reating collaborative pathways to **resiliency, recovery, and independence** for Tennesseans living with mental illness and substance use disorders."[24]

187. DMHSAS' vision is to be a "state of **resiliency, recovery, and independence** in which Tennesseans living with mental illness and substance use disorders thrive."[25]

188. The State identifies the following fundamental principles to carrying out DMHSAS' responsibilities:

> (1) Stable service systems that provide flexibility, advocacy, **effective communication**, targeted outcomes, continuous evaluation, and improvement based on best practice and research;
> (2) Early identification of needs and the inclusion of both prevention and early intervention services and supports;
> (3) Timely response to the needs, rights and desires of those served;
> (4) Treating service recipients and families with dignity and respect;
> (5) Protection of service recipients from abuse, neglect, and exploitation;
> (6) Accurate and responsible accountability for the use of public resources;
> (7) Ongoing education and skills development of the workforce; and
> (8) **Cultural competence of persons providing service.**

Tenn. Code Ann. § 33-1-203 (emphasis added).

DMHSAS' Oversight of Its Licensed Providers

189. DMHSAS's licenses mental health residential treatment providers and other providers to support consumers with MI and SUD who live in residential group homes and participate in community programs.

[24] *Department of Mental Health and Substance Abuse Disorders: Our Mission and Our Vision,* TN.GOV, https://www.tn.gov/behavioral-health.html (last visited December 8, 2021) (emphasis in the original).
[25] *Id.*

190. The licensed providers' supports include, but are not limited to, providing DMHSAS consumers with a comprehensive array of prevention, early intervention, treatment, rehabilitation services, including peer recovery or group therapy, habilitation services, safety services, group homes with direct service providers (staff), transportation, telephones, assistance with making medical and mental health appointments, and assistance with taking medications.

191. DMHSAS publishes licensure rules for mental health adult residential treatment service providers and mental health supportive living facilities.[26]

192. DMHSAS has not promulgated any relevant regulations addressing compliance with the ADA and Section 504 in the provision of MI and SUD services to Deaf consumers.

193. DMHSAS has not issued specific policies, procedures, or guidance on ensuring accessibility for Deaf consumers.

194. DMHSAS has not instructed its licensees regarding their obligations to ensure that MI and SUD services are accessible to Deaf consumers, including through effective communication.

195. DMHSAS has not issued any directives to DMHSAS licensees explaining that they have an affirmative obligation to provide accommodations for Deaf consumers, and that they must give primary consideration to the Deaf consumer's preferred form of communication.

196. DMHSAS has not conducted or required its licensed providers to have trainings on accessibility and effective communication specifically for Deaf consumers.

197. DMHSAS has not provided sufficient funding to secure supports needed for Deaf consumers to have equal access to and effective communication for its services and programs.

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[26]*Rules of the Tennessee Department of Mental Health and Substance Abuse Services,* https://publications.tnsosfiles.com/rules/0940/0940.htm (last visited December 8, 2021).

198. Defendant DMHSAS has not ensured that its licensees provide effective communication at group homes, group therapy, community mental health treatment, and for other MI and SUD programs and services.

DMHSAS Individualized Placement and Support Model & Case Management Model

Individualized Placement and Support

199. DMHSAS adheres to an individualized placement and support (IPS) model. "The state will accomplish its [DMHSAS'] purposes through community-based systems that provide: (1) Access to services and supports that are **individualized to the capacities, needs and values of each person**…." Tenn. Code Ann. § 33-2-103(1) (emphasis added).

200. Furthermore, the State mandates the DMHSAS system of care be:

> (1) [P]**erson-centered** and family-focused, with the needs and choices of the individual and family, as appropriate, determining the types and mix of services and supports provided . . . ;
>
> (2) [I]**ndividualized services and supports** based on an **individualized service plan** that is comprehensive, coordinated, age appropriate, provides smooth transition through life stages, involves families as appropriate, and is developed by qualified professionals in consultation with service recipients and family members as appropriate;
>
> (3) [C]ommunity-based and provides for service in the least restrictive, most appropriate setting;
>
> (4) [C]u**lturally competent** with agencies, programs, services, and supports that are responsive to the cultural, racial, and ethnic differences of the populations they serve; . . .

Tenn. Code Ann. § 33-2-104 (emphasis added).

201. **DMHSAS also "provides a comprehensive array of services and supports … based on the needs and choices of individuals** and families served." Tenn. Code Ann. § 33-2-106(a) (emphasis added).

IX. FACTUAL ALLEGATIONS REGARDING THE DMHSAS PLAINTIFFS

Plaintiff Christal Helton

202. Plaintiff Christal Helton is a resident of Montgomery County, Tennessee.

203. Ms. Helton is a 44-year-old Deaf individual who has a diagnosis of chronic paranoid schizophrenia.

204. Ms. Helton is profoundly Deaf and communicates primarily in ASL.

205. She was educated at TSD in Knoxville, TN.

206. Ms. Helton's primary mode of communication is ASL.

2015 Admission to Moccasin Bend Mental Health Institute

207. Ms. Helton was admitted to Moccasin Bend Mental Health Institute (MBMHI), a DMHSAS-operated Regional Mental Health Institute (RMHI), on or about March 10, 2015.

208. Ms. Helton's intake records at MBMHI noted that she was "deaf and nonverbal" and had poor written communication skills. Her records also indicate that Ms. Helton often had difficulty understanding staff due to her deafness.

209. Ms. Helton's Master Treatment Plan, dated March 13, 2015, noted a need to discuss Ms. Helton's medication with her, and for Ms. Helton to participate in crisis management and counseling, including group therapy. MBMHI staff wrote in an Interdisciplinary Progress Note (IPN), dated April 14, 2015, that Ms. Helton required a sign language interpreter to discuss these aspects of her care.

210. Ms. Helton did not have access to QMHIs, sign fluent staff, or sign fluent mental-health providers for her in-patent stay at MBMHI for treatment plan meetings, medication education, mental health counseling, group therapy, and transition meetings. Therefore, she could not participate in her own mental health care.

211. MBMHI only sporadically provided a sign language interpreter, who was not qualified in mental health interpreting, for Ms. Helton during the first few weeks of her admission. Approximately one month into her stay at MBMHI, on or about April 14, 2015, and according to medical records, MBMHI ceased providing Ms. Helton with a qualified sign language interpreter except for once a week, so staff could chart notes.

212. MBMHI staff mostly relied on written notes and lip reading in attempts to communicate with Ms. Helton, even in times of acute mental health crises. Written notes and lip reading do not provide Ms. Helton with effective communication for her mental health care. Ms. Helton needs to communicate in ASL either directly with someone who is fluent in ASL or through a qualified sign language interpreter.

213. During a forensic exam on or about April 17, 2015, Ms. Helton was forced to communicate with the therapist through written notes. According to the therapist, Ms. Helton wrote, "I don't understand."

214. MBMHI also failed to provide Ms. Helton with access to a VP during her entire 2015 stay at MBMHI. Instead, Ms. Helton was forced to rely on staff at MBMHI to make phone calls for her on a regular phone, thereby denying her private phone calls. Because she was not provided with a VP, Ms. Helton's phone access was not equal to that of hearing patients.

215. Two months into her admission at MBHI, on or about June 3, 2015, staff wrote in an IPN note that Ms. Helton's behavior was difficult to redirect due to their communication barrier.

216. Ms. Helton's MBMHI team began to discuss her discharge and placement in a group home on or about April 27, 2015. At least three licensed DMHSAS group homes turned Ms. Helton down for placement because they could not meet her needs due to her deafness.

217. On or about June 28, 2015, Ms. Helton was discharged to a group home in Camden, Tennessee, with no communication plan in place. Thus, MBMHI failed to provide Ms. Helton with appropriate discharge planning that would ensure placement in a community residential setting that would meet her communication needs and left her at greater risk of re-institutionalization due to this discriminatory treatment.

218. At that time and continuing to the present, the State and DMHSAS do not provide group homes that are specifically set up to meet Deaf consumers' communication needs.

2017 Admission to MBMHI

219. Ms. Helton was again admitted to MBMHI on or about November 6, 2017.

220. The November 9, 2017, intake records noted that Ms. Helton was Deaf and communicated via ASL.

221. MBMHI drafted an Initial Treatment Plan for Ms. Helton, dated November 10, 2017. Ms. Helton's treatment goals included a remission in her psychiatric symptoms, attending individual therapy, and building rapport and trust with nurses. All of these goals require effective communication.

222. MBMHI only sporadically provided Ms. Helton with a sign language interpreter, who was not qualified in mental health interpreting, during her 2017 stay at MBMHI. At no time was she provided with a QMHI, a sign-fluent mental health provider, or sign-fluent staff. As a result, Ms. Helton was forced to attempt to communicate through lip reading or written notes, even during mental health crises.

223. Ms. Helton did not have access to QMHIs, sign fluent staff, or sign fluent providers for psychiatric appointments, treatment plan meetings, forensic evaluations, group therapy, meetings

with social workers and staff, and transition meetings. As such, she could not participate in her own mental health care.

224. According to an IPN note, dated December 3, 2017, a nurse wrote that Ms. Helton was "fearful" because she was unable to hear and felt like nobody communicated with her because of her deafness. As a "solution," the nurse provided Ms. Helton with multiple pads of paper and pens so she could write notes in English. This was not effective for Ms. Helton to have peer interaction and support equal to that of hearing patients.

225. MBMHI failed to provide Ms. Helton with a VP during her 2017 stay.

226. Ms. Helton was discharged from MBMHI on or about December 5, 2017, with no communication plan in place. Thus, MBMHI failed to provide Ms. Helton with appropriate discharge planning that would ensure placement in a community, residential setting that would meet her communication needs, leaving her at greater risk of re-institutionalization.

227. At that time and continuing to the present, the State and DMHSAS provision of group homes that are specifically set up to meet Deaf consumers' communication needs.

2018-2020 Admission to MBMHI

228. Ms. Helton was admitted to MBMHI for a third time on or about October 3, 2018.

229. At the time of Ms. Helton's intake, her estimated length of stay was thirty (30) days.

230. Ms. Helton did not have access to QMHIs, sign fluent staff, or sign fluent mental health providers for psychiatric appointments for treatment plan meetings, forensic evaluations, group therapy, meetings with social workers and staff, and transition meetings. As such, she could not participate in her own mental health care.

231. MBMHI staff often relied on written notes and lip reading in attempts to communicate with Ms. Helton despite the fact that they knew she communicated primarily in ASL. This

caused Ms. Helton frustration and prevented her from fully and meaningfully participating in her mental health treatment. Ms. Helton needs to communicate in ASL either directly with someone who is fluent in ASL or through a qualified sign language interpreter.

232. According to an Adjunctive Therapy note dated January 8, 2019, Ms. Helton did not get to participate in many activities at MBMHI due to her deafness.

233. Ms. Helton also expressed a strong desire to interact with her Deaf peers in the Deaf community while at MBMHI. According to a July 5, 2019, Adjunctive Therapy note, she was very interested in going to more Deaf activities in the community and researched upcoming Deaf events to show to her social worker. Despite Ms. Helton's interest, MBMHI failed to connect Ms. Helton with the Deaf community.

234. Ms. Helton's staff at MBMHI also noted a lack of effective communication with her. According to an Adjunctive Therapy note dated September 10, 2019, a staff member wrote that Ms. Helton would benefit from having an interpreter being more readily available. By this point in time, Ms. Helton had been at MBMHI for nearly a year.

235. Ms. Helton had access to a VP some of the time at MBMHI. However, the VP was often not in operating order.

236. On or about April of 2019, MBMHI did provide Ms. Helton with a sign language interpreter to participate in the Bleyzer Home Program, a program developed for patients who have been in the hospital for an extended period of time which focuses on skills needed to live in the community. With the assistance of the sign language interpreter for this program, Ms. Helton was finally able to interact with staff and peers and made strides towards independent living.

237. On or about January 14, 2019, MBMHI began looking for a group home placement for her at a licensed DMHSAS facility.

238. According to medical records, Ms. Helton's discharge from MBMHI was dependent on being placed in a group home. On or about April 25, 2019, a social worker noted that she had checked with several group homes who were unable or unwilling to accommodate Ms. Helton's disability of deafness.

239. According to an IPN note, dated October 16, 2018, a sign language interpreter advised staff at MBMHI that placement for Ms. Helton in the community was difficult due to her inability to communicate with staff, and that Ms. Helton would be most successful in a group home with staff who knew how to sign or who understand how to work with Deaf individuals.

240. Ms. Helton expressed a strong desire to be placed in a facility and/or home with other Deaf residents and staff accustomed to working with Deaf individuals.

241. At that time and continuing to the present, the State and DMHSAS do not provide provision of group homes that are specifically set up to meet Deaf consumers' communication needs.

242. At that time and continuing to the present, the State and DMHSAS do not contract with, fund, or provide an adequate network of facilities and providers who meet the needs of Deaf consumers.

243. A group home that would accept Ms. Helton was finally located in February 2020. By that time, Ms. Helton had been **unnecessarily institutionalized for over a year** due to an insufficient network of facilities and providers for Deaf individuals.

244. Ms. Helton was discharged to a DMHSAS-licensed group home in Cookeville, Tennessee, on February 28, 2020, with no communication plan in place. Thus, MBMHI failed to provide Ms. Helton with appropriate discharge planning that would ensure placement in a

community, residential setting that would meet her communication needs, leaving her at greater risk of re-institutionalization.

Residential Placement at Absolute Care, LLC.

245. Ms. Helton began living at a DMHSAS-licensed group home run by Absolute Care, LLC ("Absolute Care") on or about February 28, 2020.

246. Ms. Helton requires mental health services and other group home services to stay compliant on her medication, to manage the symptoms of her mental illness, and to gain the skills to transition to independent living.

247. Ms. Helton's person-centered plan, dated February 26, 2020, lists the following goals: being compliant with treatment, socializing with peers, and attending group therapy. All of these goals require effective communication.

248. At the time of her placement, Ms. Helton's group home had no sign-fluent staff, no sign-fluent roommates, no VP, and no access to qualified sign language interpreters, QMHIs, and sign-fluent mental health providers. Thus, Ms. Helton was going into a home where she would have no effective communication for mental health treatment, habilitative programs, peer interaction and support, and other programs and services.

249. Staff at Ms. Helton's current group home communicate with her through lip reading or written English on a white board or via texting on an iPad, which is not effective for Ms. Helton and can lead to frustration. Ms. Helton needs to communicate in ASL either directly with someone who is fluent in ASL or through a qualified sign language interpreter.

250. According to records from the group home, Ms. Helton requires prompting and assistance in group therapy due to not being able to hear.

251. Ms. Helton is required to attend multiple group therapy sessions approximately five days a week at her group home for her mental health, wellbeing, and recovery. The group therapy involves various habilitative and rehabilitative topics, including coping skills, communication, and medication management.

252. The topics in group therapy often involve the exchange of lengthy and complex information. For example, during one group therapy session that Ms. Helton attended with other residents on June 18, 2021, the topic was the "SIFT technique" (S = sensations, I = images, F = feelings, T = thoughts), a technique to help understand and manage emotions.

253. The group therapy education and instructions are delivered in spoken English. During group therapy sessions, residents of Ms. Helton's group home are given the opportunity to orally discuss the information presented. The instructor may give the residents worksheets to complete that require proficiency in English reading comprehension along with oral instructions on how to complete the worksheet. Finally, the instructor may give residents oral instructions about a topic to write about in their journals.

254. Ms. Helton does not receive any sign language interpreting for the group therapy sessions at her group home. She sits in group therapy unable to hear and fully understand the information presented, feeling isolated.

255. The instructor attempts to communicate with Ms. Helton via written notes which is ineffective for Ms. Helton during group therapy. She cannot participate in the group therapy discussion with her peers. She cannot hear the questions that her fellow residents ask nor ask questions herself. She is not getting the benefits of these mental health treatment services that her hearing peers are receiving.

256. One of Ms. Helton's regular group therapy sessions deals with how to better communicate with staff, peers, and others. However, Ms. Helton does not have sign language interpreters during these sessions, so she is unable to effectively communicate in the sessions about communication.

257. Ms. Helton has a VP, but it is not always in operating order.

258. Ms. Helton wants to work and earn her own money so that she can work towards independence and avoid re-institutionalization at an RMHI. However, Absolute Care staff has insisted that because she has to attend group therapy sessions in her home, she cannot work outside of the home. This mandate requiring Ms. Helton to do a certain amount of group therapy (which is not accessible to her) to stay in her home, and, thus, barring her from employment, is antithetical to the Independent Placement and Supports (IPS) model followed by DMHSAS. In an IPS model, work and/or gainful employment is part of a consumer's recovery.

259. According to the group home records, Ms. Helton's mental health is suffering. She is often depressed, sleeps more, and isolates in her room.

260. Ms. Helton desires to have staff and roommates with whom she can communicate and seek support.

261. Without effective communication, Ms. Helton cannot reach the goals set forth by the DMHSAS in providing its services, including rehabilitative, therapeutic, habilitative, and independence goals.

262. The State and DMHSAS have failed and are failing to provide Mr. Helton with effective communication and person-centered supports, including but not limited to:

a. an appropriate communication evaluation given by a person who communicates in ASL and who has experience working with Deaf individuals with MI;

b. programs, services, and activities offered with signing staff or qualified sign language interpreters;
c. qualified sign language interpreters for case plan meetings;
d. qualified mental health sign language interpreters or sign-fluent mental health providers for mental health treatment;
e. qualified sign language interpreters or sign-fluent providers for behavioral, vocational, habilitative, counseling, community, and other services;
f. coordination of and scheduling qualified sign language interpreters for medical appointments;
g. provision of group homes that are specifically set up to meet Deaf consumers' communication needs, including, but not limited to, sign-fluent staff and necessary AT for Deaf individuals;
h. ongoing, strong connections with the Deaf community, including, but not limited to, sign-fluent roommates and continued ASL exposure; and
i. person-centered planning and supports.

263. Ms. Helton is in grave risk of a decline in her ability to use ASL due to language deprivation and isolation.

264. Because there are no or an inadequate network of group homes or other long-term mental health care programs accessible and available in the State for Deaf persons, Ms. Helton's mental illness goes untreated.

265. To date, Ms. Helton has not had a mental health provider or group home that has been able to meet her communication needs. This inadequate network of providers puts Ms. Helton at greater risk of re-institutionalization.

266. As a result of the State and DMHSAS' failures to provide effective communication to Ms. Helton, she has been re-institutionalized in State RMHIs.

267. Because she cannot access the programs and services that hearing consumers can, Ms. Helton is currently placed in a more restrictive environment than her hearing peers and is at an increased risk for further re-institutionalization.

268. As a result of the failures of the State and DMHSAS, Ms. Helton has suffered and continues to suffer from emotional distress, isolation, stigma, exacerbation of mental health symptoms, and discriminatory conduct.

Plaintiff Patrick Downs

269. Plaintiff Patrick Downs is a resident of Davidson County, Tennessee.

270. Mr. Downs is twenty-nine-years-old and profoundly Deaf. He communicates primarily in ASL.

271. Mr. Downs also has diagnoses of Bipolar I Disorder and Epilepsy. He has also experienced depression, anxiety, and psychosis.

272. He currently lives in a group home run by DMHSAS licensed provider, Eagle's Nest Transitional Living, LLC ("Eagle's Nest") in Nashville, Tennessee.

273. Prior to residing in his Eagle's Nest group home, Mr. Downs was in and out of mental health hospitals and mental health group homes.

274. Mr. Downs requires mental health services to stay compliant on his medication, to manage the symptoms of his mental illness, and to gain the skills to transition to independent living.

275. Mr. Downs is required to attend multiple group therapy sessions almost every day at his group home for his mental health and wellbeing and recovery. The group therapy involves oral

instruction on various habilitative and rehabilitative topics, including coping skills, medication, management, and communication. These topics often involve the exchange of lengthy and complex information.

276. However, Mr. Downs has no qualified sign language interpreters at group therapy, and, therefore, gets little to no benefit from these sessions. The multiple group therapy sessions per day are conducted in spoken English. Mr. Downs sits in group therapy unable to hear or fully understand the information presented or participate in the discussion with his hearing peers. Staff may write notes back and forth with him during the group therapy sessions in an attempt to communicate with him. This is not effective for Mr. Downs. Mr. Downs needs to communicate in ASL either directly with someone who is fluent in ASL or through a qualified sign language interpreter.

277. Looking at some of the answers to these written questions drafted by Mr. Downs' staff, it is obvious that Mr. Downs does not often understand what is being conveyed in these group therapy sessions.

278. For example, On January 7, 2020, staff did a group therapy or "PSR" session on coping skills. When asked about his coping skills, Mr. Downs responded "I don't know."

279. On February 23, 2020, staff did a PSR on understanding your medication. When staff asked Mr. Downs if he understood, Mr. Downs shrugged his shoulders.

280. On May 31, 2020, staff did a PSR on the side effects of medication. Mr. Downs once again shrugged his shoulders.

281. Group home staff has no idea how to communicate or interact with Mr. Downs. On March 16, 2021, one of his staff members wrote in frustration that she "tried to express to consumer [Mr. Downs] the importance of attending his [mental health] appoints [sic] but

consumer refuse [sic] to listen." Mr. Downs has no way of "listening" to verbal directives from staff, as he is Deaf.

282. Mr. Downs has no staff members who sign and no roommates who sign. He has expressed feelings of extreme isolation and loneliness at the group home. He has no friends and no peer support.

283. Staff has written that Mr. Downs should "talk" to them when he feels sad or has suicidal ideations. For instance, he experienced intense grief when two of his relatives, including his mother, passed away in quick succession in 2020. However, Mr. Downs cannot effectively express any feelings of despair, isolation, and thoughts of killing himself to staff because they do not understand his language of ASL.

284. Mr. Downs' Individual Care Plan, dated January 6, 2021, sets forth goals and objectives for the upcoming year.

285. In the plan, Mr. Downs states that his goal is to have his own apartment with his own roommates. The discharge plan is listed as "to step down to a lower level of care."

286. One objective to meet this goal includes Mr. Downs initiating engaging with staff four times a week. None of Mr. Downs' staff know ASL, so it would be nearly impossible for Mr. Downs and his staff to engage in any meaningful way four times a week. This implausible discharge plan puts Mr. Downs is in a more restrictive setting than his hearing peers and is at greater risk of re-institutionalization.

287. Another objective for this goal includes Mr. Downs responding to education and coaching on improving anger management "by using coping skills at least 4 times each day without prompting." The education and coaching on anger management skills are not provided

to Mr. Downs in ASL and, therefore, it would be difficult if not impossible for him to respond to this education and coaching in any meaningful way.

288. Mr. Downs' Individual Care Plan also provides for psychiatric emergency management, otherwise known as a "crisis plan." For example, the crisis plan lists Eagle's Nest director, Yovonda Barefield, as the name of the person who can help in a crisis situation. Ms. Barefield does not know ASL. In a crisis situation, Ms. Barefield would be unable to effectively communicate with Mr. Downs. Thus, Mr. Downs has an inoperable crisis plan and is at great risk for self-harm should he experience a psychiatric emergency.

289. In non-crisis situations, Eagle's Nest does not provide Mr. Downs with qualified sign language interpreters. During meetings with Ms. Barefield, she attempts to communicate with Mr. Downs in written notes which do not provide him with effective communication.

290. Staff also get frustrated when they think Mr. Downs doesn't "listen" or follow house rules, and Mr. Downs, in turn gets frustrated with them for not being able to communicate with him. It is a vicious cycle that has led to physical confrontations between Mr. Downs, his roommates, and staff.

291. Understandably frustrated with the lack of communication in his home, Mr. Downs eloped from his home in September of 2021, and ended up on the streets for several days leaving him at greater risk of harm, serious injury, and death.

292. The lack of communication and resulting frustration and upheaval have caused Mr. Downs to be re-institutionalized in more restrictive settings. In fact, after a confrontation with a roommate at his group home, Mr. Downs was re-institutionalized at Middle Tennessee Mental Health Institute (MTMHI) in November of 2021.

293. The State and DMHSAS have failed and are failing to provide Mr. Downs with effective communication and person-centered supports, including but not limited to:

a. an appropriate communication evaluation given by a person who communicates in ASL and who has experience working with Deaf individuals with MI;

b. programs, services, and activities offered with signing staff or qualified sign language interpreters;

c. qualified sign language interpreters for case plan meetings;

d. qualified mental health sign language interpreters or sign-fluent mental health providers for mental health treatment;

e. qualified sign language interpreters or sign-fluent providers for behavioral, vocational, habilitative, community, and other services;

f. coordination of and scheduling qualified sign language interpreters for medical appointments;

g. provision of group homes that are specifically set up to meet Deaf consumers' communication needs, including, but not limited to, sign-fluent staff and necessary AT for Deaf individuals;

h. ongoing, strong connections with the Deaf community, including, but not limited to, sign-fluent roommates and continued ASL exposure; and

i. person-centered planning and supports.

294. Due to this lack of person-centered supports and effective communication, Mr. Downs has made little to no progress in his goal of gaining skills necessary to transition out of the house to more independent living. He feels isolated, depressed, and frustrated.

295. Mr. Downs is at grave risk of a decline in his ability to use ASL due to language deprivation and isolation.

296. Because there are no group homes or other long-term mental health care programs available or accessible in the State for Deaf persons, Mr. Downs' mental illness goes untreated.

297. To date, Mr. Downs has not had a mental health provider or group home that has provided effective communication and meet his needs. This inadequate network of providers puts Mr. Downs at greater risk of re-institutionalization.

298. As a result of the State and DMHSAS' failures to provide effective communication to Mr. Downs, he has been re-institutionalized in a state RMHI.

299. Because he cannot access the programs and services that hearing consumers can, Mr. Downs is currently placed in a more restrictive environment than his hearing peers and is at an increased risk for further re-institutionalization.

300. As a result of the failures of the State and DMHSAS, Mr. Downs has suffered and continues to suffer from emotional distress, isolation, stigma, exacerbation of his mental illness symptoms, and discriminatory conduct.

X. FACTUAL ALLEGATIONS RELATING TO THE STATE AND DMHSAS' FAILURE TO PROVIDE EFFECTIVE COMMUNICATION FOR AND EQUAL ACCESS TO ITS PROGRAMS AND SERVICES FOR PLAINTIFFS HELTON AND DOWNS

Defendants the State and DMHSAS Are Failing to Provide Individualized Placement and Supports for Plaintiffs Helton and Downs

301. Defendants the State and DMHSAS are failing to provide individualized placement and supports (IPS) for Plaintiffs Helton and Downs.

302. IPS begins with effective communication for consumers.

303. Ms. Helton and Mr. Downs communicate primarily in ASL. Despite this, none of their planning meetings, programs, or services are delivered in ASL.

304. Without planning and delivery of programs and services in ASL, Ms. Helton and Mr. Downs get minimal if any benefit from and cannot access the person-centered planning process and implementation thereof.

305. Without effective communication for Ms. Helton and Mr. Downs, their providers cannot access and sustain "a broad range and scope of flexible services and supports across the domains of residential living, working, learning, community participation, and family supports, including crisis, respite and other emergency services, that help service recipients maintain respected and active positions in the community. …" Tenn. Code Ann. § 33-2-102(b)(1).

306. Without effective communication, Ms. Helton and Mr. Downs do not have operative person-centered plans.

307. Without effective communication, Ms. Helton and Mr. Downs do not receive equal access to Defendant DMHSAS' programs and services.

308. Without effective communication, Ms. Helton and Mr. Downs are in a more restrictive environment than their hearing peers, and are at greater risk of re-institutionalization and incarceration.

309. These failures on the part of the State and DMHSAS are causing Plaintiffs Helton and Downs significant and ongoing harm as detailed herein.

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Defendants the State and DMHSAS are Failing to Provide Necessary Auxiliary Aids and Services to Ensure Effective Communication for Plaintiffs Helton and Downs and Denying Them Equal Access to Their Services and Programs

310. The State and DMHSAS are failing to provide necessary auxiliary aids and services to Plaintiffs Helton and Downs to ensure effective communication for and an equal opportunity to participate in, and enjoy the benefits of, the services, programs, and activities of DMHSAS.

311. The State and DMHSAS are failing to provide:

a. appropriate communication evaluations given by a person who communicates in ASL and who has experience working with Deaf individuals with MI;

b. programs, services, and activities offered with signing staff or qualified sign language interpreters;

c. qualified sign language interpreters for case plan meetings;

d. qualified mental health sign language interpreters or sign-fluent mental health providers for mental health treatment;

e. qualified sign language interpreters or sign-fluent providers for behavioral, vocational, habilitative, counseling, and other community services;

f. coordination of and scheduling qualified sign language interpreters for medical appointments;

g. provision of group homes that are specifically set up to meet Deaf consumers' communication needs, including, but not limited to, sign-fluent staff and necessary AT for Deaf individuals;

h. ongoing, strong connections with the Deaf community, including, but not limited to, sign-fluent roommates and continued ASL exposure; and

i. person-centered planning and supports.

312. The State and DMHSAS' failure to provide Plaintiffs Helton and Downs with effective communication are a violation of the mandates set forth in Title II of the ADA and Section 504.

313. Plaintiffs Helton and Downs are not receiving the rehabilitative and habilitative services they need to improve their communication. Because Plaintiffs Helton and Downs live in group homes where they cannot communicate with peers or staff, they are being denied one of the most basic forms of habilitation— learning to communicate effectively with the world around them.

314. Plaintiffs Helton and Downs are not receiving mental health therapeutic services, including group therapy, in ASL and, therefore, receive little to no benefit from these services in relation to hearing consumers and are, therefore, at greater risk of re-institutionalization in a more restrictive setting.

315. At that time and continuing to the present, the State and DMHSAS do not provide provision of group homes that are specifically set up to meet Deaf consumers' communication needs.

316. The State and DMHSAS do not provide an adequate network of qualified providers who are familiar with Deaf culture and have sufficient capacity to meet the communication needs of Deaf consumers to the same extent that existing providers meet the needs of hearing consumers.

317. The State and DMHSAS are also failing to give primary consideration to the requests of Plaintiffs Helton and Downs when choosing auxiliary aids or services to provide, in violation of 28 C.F.R. § 35.160.

318. Because the State and DMHSAS do not provide effective communication to Plaintiffs Helton and Downs, they are denied equal access to DMHSAS' programs and services in violation of Title II of the ADA and Section 504.

319. These failures on the part of the State and DMHSAS are causing Plaintiffs Helton and Downs significant and ongoing harm as detailed herein.

Plaintiffs Helton and Downs are Harmed by the State and DMHSAS' Failure to Provide Effective Communication and Equal Access to DMHSAS' Programs and Services

320. The lack of appropriate programs for Plaintiffs Helton and Downs has damaging effects on them and leaves them at risk of greater re-institutionalization.

321. Without effective communication and delivery of services in ASL, Plaintiffs Helton and Downs cannot access DMHSAS' programs and services that are supposed to enrich their quality of lives and promote recovery and independence.

322. Lack of communication effects every area of person-centered planning supports, including safety. Lack of access to report abuse, lack of understanding emergency evacuation directions, and the inability to communicate symptoms such as pain, discomfort, the side effects of medications, or mental health symptoms, such as suicidal ideations, puts the health and safety of Plaintiffs Helton and Downs at risk.

323. As a result of these failures on behalf of the State and DMHSAS, Plaintiffs Helton and Downs have suffered and are suffering significant harm. They have been rendered silent and invisible because they cannot communicate in their native language. They have lost language and/or are at graver risk of losing language. They have suffered emotional distress, communication neglect, isolation, stigma, exacerbation of mental health symptoms, and have been subjected to discriminatory conduct.

XI. FACTUAL ALLEGATIONS RELATING TO PLAINTIFF DISABILITY RIGHTS TENNESSEE

The Protection & Advocacy System

324. DRT is part of the nationwide P&A system which is mandated by Congress to protect and advocate for the rights of people with disabilities in the United States. There is a P&A in all fifty (50) states and in United States territories. Together, the P&As make up the National Disability Rights Network.

325. Congress has given the P&As the statutory responsibility to represent, advocate for, and redress the rights of persons with disabilities, including Deaf individuals who receive services through a state or a state entity.[27]

326. DRT is the P&A organization designated in the State of Tennessee.

Disability Rights Tennessee's Operations

327. DRT serves the entire state of Tennessee and has offices in Memphis, Nashville, and Knoxville.

328. DRT's mission is to protect the rights of Tennesseans with disabilities with the vision that Tennesseans with disabilities will experience freedom from harm, freedom to participate in the community, and freedom from discrimination.

329. DRT has a multiple member board of directors, including a member who is Deaf. The board of directors is comprised of a minimum of one-third of the membership being people with disabilities and/or immediate family members of people with disabilities.

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[27] *See generally* 42 U.S.C.A. § 15043, 42 U.S.C. § 300d-53(k), 42 U.S.C. § 10805, and 29 U.S.C. § 794e(f).

330. DRT's Protection and Advocacy for Individuals with Mental Illness ("PAIMI") Advisory Council (PAC) is comprised of people with mental illness, family members, and others who have experience advocating for or serving people with mental illness. Many members of the PAC are individuals who have received or are receiving mental health services or are family members of such individuals.

331. DRT represents people with sensory disabilities, including those who are Deaf, and provides means by which they express their collective views and protect their collective interests.

332. DRT routinely seeks input from individuals with disabilities when formulating its specific areas of work and collaborates regularly with local and state disability organizations and taskforces that consist, in part, of people with disabilities.

333. People with disabilities who are served individually or whose communities are served provide input through information gathering from DRT's stakeholders and constituents, DRT's Board of Directors, PAC, and the Developmental Disabilities Network, which is comprised of the Council on Developmental Disabilities, the ARC, and the University Centers of Excellence in Developmental Disabilities.

334. Input from constituents, their families, and service providers informs the financial and programmatic decisions regarding the delivery of services and the allocation of resources for future advocacy. DRT conducts multiple types of information gathering from its constituents and stakeholders. Surveys of constituents and stakeholders are conducted every four years. Focus groups are also conducted every four years. Annually, public comment is requested. Satisfaction surveys regarding the experience of service recipients are provided at the conclusion of each service request.

335. DRT has also a grievance procedure so that individuals with disabilities have access to a mechanism for resolving any issues of concern with DRT's provision of services. Additionally, DRT has a PAIMI Assurance Grievance process to assure individuals receiving mental health services and family members or representatives of such individuals that DRT is operating in compliance with requirements of the PAIMI Act.

336. As a result of DRT's organizational structure, leadership, allocation of resources for future advocacy and outreach, connections with constituents in the disability community and involvement in disability-rights advocacy, people with disabilities, including Deaf individuals, have a strong voice in and a direct influence on the work of DRT.

337. DRT's Board of Directors, PAC, and employees, most of whom have disabilities themselves and/or are family members of individuals with diverse disabilities, are knowledgeable about the needs and rights of individuals with disabilities served by the agency.

DRT's Associational Standing

338. For many years, DRT has actively collaborated with and sought input from individuals who are Deaf about issues facing them. Members of the Deaf community have expressed their grave concerns about how Deaf individuals who receive services through DIDD and DMHSAS are not getting effective communication for and equal access to those services.

339. Deaf individuals who receive DIDD and DMHSAS services are among the constituents who are served by, and who inform the work of, DRT ("DRT's constituents"). The interest of these constituents goes to the heart of DRT's mission to ensure that people with disabilities, including Deaf individuals, are free from harm and free from discrimination and have equal access to statewide I/DD, MI, and SUD services and supports.

340. DRT brings this suit in its associational capacity as the State's P&A, and in conjunction with Plaintiffs Battle, Wilson, Underwood, Helton, and Downs to redress the rights of its Deaf constituents to have effective communication for and equal access to DIDD and DMHSAS' services, programs, and supports, pursuant to Title II of the ADA and Section 504.

341. DRT has standing on behalf of its Deaf constituents who receive services through DIDD and DMHSAS, and who are substantially affected by Defendants' noncompliance with constitutional and statutory protections, to enforce their legal and Constitutional rights because: (1) DRT's constituents would otherwise have standing to sue in their own right; (2) the interests it seeks to protect are germane to DRT's purpose of protecting and enforcing the rights of individuals with disabilities; and (3) neither the claim asserted nor the relief requested requires the participation of DRT's constituents.

342. In addition, the relief DRT seeks—declaratory and injunctive—is the type of relief appropriate for DRT to receive on behalf of its constituents.

XII. CLAIMS FOR RELIEF

A. FIRST CLAIM FOR RELIEF BY PLAINTIFFS BATTLE, WILSON, UNDERWOOD, AND DRT AGAINST THE STATE AND DIDD

TITLE II OF THE AMERICANS WITH DISABILITIES ACT 42 U.S.C. § 12131 et seq.

General Provisions

343. Plaintiffs incorporate the preceding paragraphs as if fully set forth herein.

344. Title II of the ADA provides: "[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by such entity." 42 U.S.C. § 12132; see also 28 C.F.R. § 35.130(a)-(b).

345. Title II of the ADA prohibits public entities from discriminating against individuals with disabilities by reason of their disabilities, either directly or through contractual arrangements. 42 U.S.C. § 12132; 28 C.F.R. § 35.130(a)-(b).

346. Public entities, such as the State and DIDD, may not, directly or through contractual or other arrangements, employ methods of administering their programs that result in discrimination or that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the public entity's program with respect to individuals with disabilities. 28 C.F.R. § 35.130(b)(3)(i)-(ii).

347. The State has been and is a "public entity" within the meaning of Title II of the ADA. 42 U.S.C. § 12131(1).

348. DIDD has been and is a "public entity" within the meaning of Title II of the ADA. 42 U.S.C. § 12131(1).

349. Plaintiffs Battle, Wilson, and Underwood and DRT's constituents have disabilities within the meaning of Title II of the ADA: They have physical impairments that substantially limit one or more major life activities, including, but not limited to, hearing. They also have an impairment of their ability to communicate effectively. 28 C.R.F. § 35.108(a)(1)(i).

350. Plaintiffs Battle, Wilson, and Underwood and DRT's constituents are "qualified individuals with a disability" within the meaning of Title II of the ADA and its implementing regulations and meet the essential eligibility requirements for receipt of DIDD's offered services, programs, or activities, within the meaning of Title II of the ADA. 42 U.S.C. §12131(2); 28 C.F.R. § 35.104; 28 C.F.R. § 35.108(a)(1)(i).

Effective Communication & Auxiliary Aids and Services

351. Under Title II of the ADA, public entities, including the State and DIDD, must take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions who are Deaf are as effective as communications with those who are hearing. 28 C.F.R. § 35.160(a).

352. Pursuant to Title II of the ADA's implementing regulations, public entities, including the State and DIDD, must furnish appropriate auxiliary aids and services where necessary to afford Deaf individuals effective communication and an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity. Id. § 35.160(b)(1).

353. Auxiliary aids and services include qualified sign language interpreters, assistive listening devices, open and closed captioning, and other effective methods of making aurally delivered information available, such that they may understand and respond sufficiently well so as to have equal opportunity to participate in and enjoy the benefits of a service, program or activity of a public entity. Id. § 35.104.

354. The auxiliary aid or service used must be both appropriate and effective. Id. § 35.160(b)(1)– (b)(2). In order to be effective, the auxiliary aid or service must be provided in an accessible format, 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).

355. Title II of the ADA's implementing regulations provide that "[t]he type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place." Id. § 35.160(b)(2).

356. Furthermore, when selecting an auxiliary aid or service to use, public entities shall give "primary consideration to the requests of individuals with disabilities." 28 C.F.R. § 35.160(b)(2). The United States Department of Justice, charged with interpreting the ADA, issued the following guidance regarding effective communication:

> It is important to consult with the individual to determine the most appropriate auxiliary aid or service, because the individual with a disability is most familiar with [their] disability and is in the best position to determine what type of aid or service will be effective. Some individuals who were deaf at birth or who lost their hearing before acquiring language, for example, use sign language as their primary form of communication and may be uncomfortable or not proficient with written English, making use of a notepad an ineffective means of communication.[28]

Reasonable Modifications & Other Provisions

357. Public entities, including the State and DIDD, "shall make reasonable modifications in policies, practices or procedures when the modifications are necessary to avoid discrimination on the basis of disability[.]" 28 C.F.R. § 35.130(b)(7).

358. In providing any aid, benefit, or service, a public entity may not, directly or through contractual, licensing, or other arrangements, on the basis of disability:

> (i) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service;
>
> (ii) Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded to others;
>
> (iii) Provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others; …
>
> (iv) Aid or perpetuate discrimination against a qualified individual with a disability by providing significant assistance to an agency, organization, or person that discriminates

[28] The Americans with Disabilities Act: Title II Technical Assistance Manual § II-7.1100, available at https://www.ada.gov/taman2.html#II-7.1100 (Last Accessed December 8, 2021.)

> on the basis of disability in providing any aid, benefit, or service to beneficiaries of the public entity's program; …
>
> (v) Otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

Id. at § 35.130(b)(1)(i)(ii),(iii),(v) & (vii).

Olmstead v. L.C. ex rel. Zimring

359. The Supreme Court held in *Olmstead* that, under Title II of the ADA, states are required to provide community-based treatment for persons with disabilities when such placement is appropriate, the affected persons do not oppose such treatment, and the placement can be reasonably accommodated. *Olmstead v. L.C. ex rel. Zimring,* 527 U.S. 581, 606 (1999).

360. The Court recognized that Congress explicitly identified unjustified "'segregation" of persons with disabilities as a "for[m] of discrimination.'" *Id.* at 599, quoting 42 U.S.C. § 12101(a)(2).

361. Under *Olmstead*, states must have a comprehensive and effective working plan to ensure that persons with disabilities are placed in the least restrictive setting of the person's liberties and are not subjected to risk of unjustified institutionalization. *Id.* at 600 & 605-06.

362. The Court elaborated:

> Recognition that unjustified institutional isolation of persons with disabilities is a form of discrimination reflects two evident judgments. First, institutional placement of persons who can handle and benefit from community settings perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of communicating in community life … Second, confinement in an institution severely diminishes the everyday life activities of individuals, including family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment.

Id. at 600.

Allegations

363. The State and DIDD's lack of any policies, procedures, or practices regarding accessibility for Deaf consumers results in the widespread denial of effective communication for them and denies Plaintiffs Battle, Wilson, and Underwood and DRT's constituents the opportunity to benefit from DIDD's I/DD services, programs, and activities in relation to hearing DIDD consumers.

364. In overseeing statewide, I/DD services and programs, the State and DIDD, through its actions and omissions, discriminate against Plaintiffs Battle, Wilson, and Underwood and DRT's constituents by reason of their disabilities in violation of Title II of the ADA and its implementing regulations. The State and DIDD's discriminatory conduct against Plaintiffs Battle, Wilson, and Underwood and DRT's constituents includes, but is not limited to:

a. failing to provide effective communication for programs, services, and activities;
b. denying them the opportunity to participate in and benefit from DIDD's aids, benefits, and services;
c. failing to afford them an opportunity to participate in or benefit from aids, benefits, or services that is equal to the opportunity afforded to hearing DIDD consumers;
d. failing to provide them with aids, benefits, or services that are as effective in affording them an opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as those provided to hearing DIDD consumers;

e. aiding and perpetuating discrimination against them by providing significant assistance to their licensed providers that discriminate against them on the basis of disability in the provision of aids, benefits or services;

f. limiting their enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

g. failing to provide necessary auxiliary aids and services for effective communication;

h. failing to give primary consideration to their requests when selecting auxiliary aids or services to provide;

i. failing to provide reasonable modifications in policies, practices, and procedures when the modifications are necessary to avoid discrimination;

j. using methods of administration that have the effect of subjecting them to discrimination by reason of disability; and

k. failing to establish an ADA compliant system.

365. In addition, the State and DIDD are violating the mandates of *Olmstead*. The State and DIDD's failure to provide any working plan to ensure that Deaf consumers receive effective communication for and equal access to DIDD's programs, services, and activities places Plaintiffs Battle, Wilson, and Underwood and DRT's constituents in a more restrictive environment than their hearing peers who communicate in and can access DIDD's programs and services in English, and unlawfully subjects them to isolation and an increased risk of unjustified institutionalization.

366. In violation of *Olmstead*, the State and DIDD's failure to provide an adequate network of qualified providers who are familiar with Deaf consumers and have sufficient capacity to meet

the communication needs of Deaf consumers, places Plaintiffs Battle, Wilson, and Underwood and DRT's constituents in a more restrictive environment than their hearing peers and unlawfully subjects them to isolation and an increased risk of unjustified institutionalization.

367. Plaintiffs Battle, Wilson, and Underwood have been injured and aggrieved by and will continue to be injured and aggrieved by the State and DIDD's ongoing discrimination against them.

368. DRT's constituents have been injured and aggrieved by and will continue to be injured and aggrieved by the State and DIDD's ongoing discrimination against them.

369. The State and DIDD's actions described in this Complaint were intentional and/or were taken with deliberate indifference to the strong likelihood that their actions and/or omissions would result in a violation of the ADA rights of Plaintiffs Battle, Wilson, and Underwood and DRT's constituents.

370. Because the State and DIDD's discriminatory conduct is ongoing, Plaintiffs Battle, Wilson, Underwood, and DRT are entitled to declaratory and injunctive relief, as well as reasonable attorneys' fees and costs in bringing this action.

371. Due to the ongoing emotional distress, stigma, isolation, neglect, and a denial of their civil rights caused by the State and DIDD, Plaintiffs Battle, Wilson, and Underwood are entitled to compensatory relief.

372. Pursuant to the remedies, procedures, and rights set forth in Title II of the ADA, Plaintiffs Battle, Wilson, Underwood, and DRT pray for the relief set forth below.

B. SECOND CLAIM FOR RELIEF BY PLAINTIFFS BATTLE, WILSON, UNDERWOOD, AND DRT AGAINST THE STATE AND DIDD

Section 504 of the Rehabilitation Act 29 U.S.C. § 794 et seq.

373. Plaintiffs reallege and incorporate by reference the allegations above as if fully set forth here.

374. Section 504 of the Rehabilitation Act of 1973 provides in relevant part: "No otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . . ." 29 U.S.C. § 794(a); see also 45 C.F.R. §§ 84.4(b), 84.21, 84.52.

375. Section 504 prohibits entities that receive Federal financial assistance from discriminating against individuals with disabilities on the basis of disability either directly or through contractual arrangements. 45 C.F.R. § 84.4(b)(1).

376. The State has been and is a recipient of Federal financial assistance withing the meaning of Section 504 and its implementing regulations.

377. The State's program is a "program or activity receiving Federal financial assistance" because the State receives Federal financial assistance for I/DD services.

378. DIDD has been and is a recipient of Federal financial assistance within the meaning of Section 504 and its implementing regulations.

379. DIDD's program is a "program or activity receiving Federal financial assistance" because DIDD receives Federal financial assistance for I/DD services.

380. Plaintiffs Battle, Wilson, and Underwood and DRT's constituents have physical impairments that substantially limit one or more major life activities. They are qualified individuals with disabilities within the meaning of Section 504 and are otherwise qualified to participate in and receive benefits from the State and DIDD's I/DD services. 29 U.S.C. § 794(a); 29 U.S.C. § 705(20).

381. Recipients of Federal financial assistance, including the State and DIDD, are prohibited from denying a qualified person with a disability any health, welfare, or other social services or benefits on the basis of disability. 45 C.F.R. § 84.52(a)(1).

382. Recipients of Federal financial assistance, including the State and DIDD, may not afford a qualified individual with a disability an opportunity to receive health, welfare, or other social services or benefits that is not equal to that offered to people without disabilities. 45 C.F.R. § 84.52(a)(2).

383. Recipients of Federal financial assistance, including the State and DIDD, may not provide a qualified person with a disability health, welfare, or other social services or benefits that are not as effective as the benefits or services provided to others. 45 C.F.R. § 84.52(a)(3).

384. Recipients of Federal financial assistance, including the State and DIDD, may not provide any benefits or services in a manner that limits or has the effect of limiting the participation of qualified individuals with disabilities. 45 C.F.R. § 84.52(a)(4).

385. Recipients of Federal financial assistance, including the State and DIDD, may not aid or perpetuate discrimination against a person with a disability by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service, to individuals with disabilities. 45 C.F.R. § 84.4(b)(1)(v).

386. Recipients of Federal financial assistance may not otherwise limit a qualified person with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service. 45 C.F.R. § 84.4(b)(1)(vii).

387. Recipients of Federal financial assistance that employ fifteen (15) or more persons, including the State and DIDD, must "provide appropriate auxiliary aids to persons with impaired

sensory, manual, or speaking skills, where necessary to afford such persons an equal opportunity to benefit from the service in question." 45 C.F.R. § 84.52(d)(1).

388. Auxiliary aids include interpreters and other aids for persons with hearing disabilities. 45 C.F.R. § 84.52(d)(3).

389. In overseeing statewide-I/DD services and programs, the State and DIDD, through its actions and omissions, discriminate against Plaintiffs Battle, Wilson, and Underwood and DRT's constituents solely by reason of their disabilities and in violation of Section 504 and its implementing regulations. The State and DIDD's discriminatory conduct against these Plaintiffs include, but is not limited to:

a. failing provide effective communication for their programs, services, and activities;
b. failing to provide them DIDD's health, welfare, or other social services benefits on the basis of disability;
c. failing to provide them an opportunity to receive benefits or services that are equal to that afforded to others;
d. failing to provide them with benefits or services that are not as effective as those benefits or services provided to others;
e. failing to provide benefits or services in a manner that does not limit or has the effect of limiting their participation;
f. aiding or perpetuating discrimination against them by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service, to them;

g. limiting their enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service;

h. failing to provide auxiliary aids for effective communication and which are necessary to afford them an equal opportunity to benefit from benefits or services;

i. failing to provide reasonable modifications in policies, practices, and procedures when the modifications are necessary to avoid discrimination;

j. using methods of administration that have the effect of subjecting them to discrimination solely by reason of disability; and

k. failing to establish a Section 504 compliant system.

390. Plaintiffs Battle, Wilson, and Underwood have been injured and aggrieved by and will continue to be injured and aggrieved by the State and DIDD's ongoing discrimination against them.

391. DRT's constituents have been injured and aggrieved by and will continue to be injured and aggrieved by the State and DIDD's ongoing discrimination against them.

392. The State and DIDD's actions described in this Complaint were intentional and/or were taken with deliberate indifference to the strong likelihood that their actions and/or omissions would result in a violation of the Section 504 rights of Plaintiffs Battle, Wilson, and Underwood and DRT's constituents.

393. Because the State and DIDD's discriminatory conduct is ongoing, Plaintiffs Battle, Wilson, Underwood, and DRT are entitled to declaratory and injunctive relief, as well as reasonable attorneys' fees and costs in bringing this action.

394. Due to the ongoing emotional distress, stigma, isolation, neglect, and denial of their civil rights caused by the State and DIDD, Plaintiffs Battle, Wilson, and Underwood are entitled to compensatory relief.

395. Pursuant to the remedies, procedures, and rights set forth in 29 U.S.C. § 794(a) and § 794a, Plaintiffs Battle, Wilson, Underwood, and DRT pray for the relief set forth below.

C. FIRST CLAIM FOR RELIEF BY PLAINTIFFS HELTON, DOWNS, AND DRT AGAINST THE STATE AND DMHSAS

TITLE II OF THE AMERICANS WITH DISABILITIES ACT 42 U.S.C. § 12131 et seq.

General Provisions

396. Plaintiffs incorporate the preceding paragraphs as if fully set forth herein.

397. Title II of the ADA provides: "[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by such entity." 42 U.S.C. § 12132; see also 28 C.F.R. § 35.130(a), (b)(1).

398. Title II of the ADA prohibits public entities from discriminating against individuals with disabilities based on their disabilities, either directly or through contractual arrangements. 42 U.S.C. § 12132; 28 C.F.R. § 35.130(a)-(b).

399. Public entities, such as the State and DMHSAS, may not, directly or through contractual or other arrangements, employ methods of administering their programs that result in discrimination or have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the public entity's program with respect to individuals with disabilities. 28 C.F.R. § 35.130(b)(3)(i)-(ii).

400. The State has been and is a "public entity" within the meaning of Title II of the ADA. 42 U.S.C. § 12131(1).

401. DMHSAS has been and is a "public entity" within the meaning of Title II of the ADA. 42 U.S.C. § 12131(1).

402. Plaintiffs Helton and Downs and DRT's constituents have disabilities within the meaning of Title II of the ADA: They have physical impairments that substantially limit one or more major life activities, including, but not limited to, hearing. 28 C.F.R. § 35.108(a)(1)(i).

403. Plaintiffs Helton and Downs and DRT's constituents are "qualified individuals with a disability" within the meaning of Title II of the ADA and its implementing regulations and meet the essential eligibility requirements for receipt of DMHSAS' offered services, programs, or activities, within the meaning of Title II. 42 U.S.C. §12131(2); 28 C.F.R. § 35.104; 28 C.F.R. § 35.108(a)(1)(i).

Effective Communication & Auxiliary Aids and Services

404. Under Title II of the ADA, public entities, including the State and DMHSAS, must take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions who are Deaf are as effective as communications with those who are hearing. 28 C.F.R. § 35.160(a).

405. Pursuant to Title II of the ADA's implementing regulations, public entities, including the State and DMHSAS, must furnish appropriate auxiliary aids and services where necessary to afford Deaf individuals effective communication for and an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity. Id. § 35.160(b)(1).

406. Auxiliary aids and services may include qualified sign language interpreters, exchange of written notes, assistive listening devices, open and closed captioning, and other effective methods of making aurally delivered information available, such that they may understand and

respond sufficiently well so as to have equal opportunity to participate in and enjoy the benefits of a service, program or activity of a public entity. Id. at § 35.104.

407. The auxiliary aid or service used must be both appropriate and effective. Id. § 35.160(b)(1)– (b)(2). In order to be effective, the auxiliary aid or service must be provided in an accessible format, 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).

408. Title II of the ADA's implementing regulations provide that "[t]he type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place." Id. § 35.160(b)(2).

409. Furthermore, when selecting an auxiliary aid or service to use, public entities must give "primary consideration to the requests of individuals with disabilities." 28 C.F.R. § 35.160(b)(2). The United States Department of Justice, charged with interpreting the ADA, issued the following guidance regarding effective communication:

> It is important to consult with the individual to determine the most appropriate auxiliary aid or service, because the individual with a disability is most familiar with [their] disability and is in the best position to determine what type of aid or service will be effective. Some individuals who were deaf at birth or who lost their hearing before acquiring language, for example, use sign language as their primary form of communication and may be uncomfortable or not proficient with written English, making use of a notepad an ineffective means of communication.[29]

[29] The Americans with Disabilities Act: Title II Technical Assistance Manual *supra* note 28 at § II-7.1100.

Reasonable Modifications & Other Provisions

410. Public entities, including the State and DMHSAS, "shall make reasonable modifications in policies, practices or procedures when the modifications are necessary to avoid discrimination on the basis of disability[.]" 28 C.F.R. § 35.130(b)(7).

411. In providing any aid, benefit, or service, a public entity may not, directly or through contractual, licensing, or other arrangements, on the basis of disability:

> (i) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service;
>
> (ii) Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded to others;
>
> (iii) Provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others; …
>
> (iv) Aid or perpetuate discrimination against a qualified individual with a disability by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the public entity's program; …
>
> (v) Otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

Id. at § 35.130(b)(1)(i)(ii),(iii),(v) & (vii).

Olmstead v. L.C. ex rel. Zimring

412. The Supreme Court held in *Olmstead* that, under Title II of the ADA, states are required to provide community-based treatment for persons with disabilities when such placement is appropriate, the affected persons do not oppose such treatment, and the placement can be reasonably accommodated. Olmstead v. L.C. ex rel. Zimring, 527 U.S. 581, 606 (1999).

413. The Court recognized that Congress explicitly identified unjustified "'segregation" of persons with disabilities as a "for[m] of discrimination.'" Id. at 599, quoting 42 U.S.C. § 12101(a)(2).

414. Under *Olmstead*, states must have a comprehensive and effective working plan to ensure that persons with disabilities are placed in the least restrictive setting of the person's liberties and are not subjected to risk of unjustified institutionalization. Id. at 600 & 605-06.

415. The Court elaborated:

> Recognition that unjustified institutional isolation of persons with disabilities is a form of discrimination reflects two evident judgments. First, institutional placement of persons who can handle and benefit from community settings perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of communicating in community life … Second, confinement in an institution severely diminishes the everyday life activities of individuals, including family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment.

Id. at 600.

Allegations

416. DMHSAS' lack of any policies, procedures, or practices regarding accessibility for Deaf consumers results in the widespread denial of effective communication. It also denies Plaintiffs Helton and Downs and DRT's constituents the opportunity to benefit from DMHSAS' services, programs, and benefits in relation to hearing consumers.

417. In overseeing statewide MI and SUD services and programs, the State and DMHSAS, through their actions and omissions, discriminate against Plaintiffs Helton and Downs and DRT's constituents by reason of their disabilities in violation of Title II of the ADA and its implementing regulations. The State and DMHSAS' discriminatory conduct against these Plaintiffs includes but is not limited to:

a. failing to provide effective communication for programs, services, and activities;

b. denying them the opportunity to participate in and benefit from DMHSAS' aids benefits and services;

c. failing to afford them an opportunity to participate in or benefit from aids, benefits, or services that is equal to the opportunity afforded to hearing DMHSAS consumers;

d. failing to provide them with aids, benefits, or services that are as effective in affording them an opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as those provided to hearing DMHSAS consumers;

e. aiding and perpetuating discrimination against them by providing significant assistance to licensed providers that discriminate against them on the basis of disability in the provision of aids, benefits or services;

f. limiting their enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

g. failing to provide necessary auxiliary aids and services for effective communication;

h. failing to give primary consideration to their requests when selecting an auxiliary aid or service to provide;

i. failing to provide reasonable modifications in policies, practices, and procedures when the modifications are necessary to avoid discrimination;

j. using methods of administration that have the effect of subjecting them to discrimination by reason of disability; and

k. failing to establish an ADA complaint system.

418. In addition, the State and DMHSAS are violating the mandates of *Olmstead*. The State and DMHSAS' failure to provide any working plan to ensure that Deaf consumers receive effective communication for and equal access to DMHSAS' programs, services, and activities

places Plaintiffs Helton and Downs and DRT's constituents in a more restrictive environment than their hearing peers who communicate in and can access DMHSAS' programs and services in English, and unlawfully subjects them to isolation and an increased risk of unjustified institutionalization.

419. In violation of *Olmstead*, the State and DMHSAS' failure to provide an adequate network of qualified providers who are familiar with Deaf consumers and have sufficient capacity to meet the communication needs of Deaf consumers, places Plaintiffs Helton and Downs and DMHSAS' constituents in a more restrictive environment than their hearing peers and unlawfully subjects them to isolation and an increased risk of unjustified institutionalization.

420. Plaintiffs Helton and Downs have been injured and aggrieved by and will continue to be injured and aggrieved by the State and DMHSAS' ongoing discrimination against them.

421. DRT's constituents have been injured and aggrieved by and will continue to be injured and aggrieved by the State and DMHSAS' ongoing discrimination against them.

422. The State and DMHSAS' actions described in this Complaint were intentional and/or were taken with deliberate indifference to the strong likelihood that its acts or omissions would likely result in a violation of the ADA rights of Plaintiffs Helton and Downs and DRT's constituents.

423. Because the State and DMHSAS' discriminatory conduct is ongoing, Plaintiffs Helton, Downs, and DRT are entitled to declaratory and injunctive relief, as well as reasonable attorneys' fees and costs in bringing this action.

424. Due to the ongoing emotional distress, stigma, isolation, neglect, and a denial of civil rights caused by the State and DMHSAS, Plaintiffs Helton and Downs are entitled to compensatory relief.

425. Pursuant to the remedies, procedures, and rights set forth in Title II of the ADA, Plaintiffs Helton, Downs, and DRT pray for the relief set forth below.

D. SECOND CLAIM FOR RELIEF BY PLAINTIFFS HELTON, DOWNS, AND DRT AGAINST THE STATE AND DMHSAS

Section 504 of the Rehabilitation Act 29 U.S.C. § 794 et seq.

426. Plaintiffs reallege and incorporate by reference the allegations above as if fully set forth here.

427. Section 504 of the Rehabilitation Act of 1973 provides in relevant part: "No otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . . ." 29 U.S.C. § 794(a); see also 45 C.F.R. §§ 84.4(b), 84.21, 84.52.

428. The State has been and is a recipient of Federal financial assistance within the meaning of Section 504 and its implementing regulations.

429. The State's program is a "program or activity receiving Federal financial assistance" because DMHSAS receives Federal financial assistance for its services.

430. DMHSAS has been and is a recipient of Federal financial assistance within the meaning of Section 504 and its implementing regulations.

431. DMHSAS' program is a "program or activity receiving Federal financial assistance" because DMHSAS receives federal financial assistance for its services.

432. Plaintiffs Helton and Downs and DRT's constituents have physical impairments that substantially limit one or more major life activities. They are qualified individuals with disabilities within the meaning of Section 504 and are otherwise qualified to participate in and

receive benefits from the State and DMHSAS' services. 29 U.S.C. § 794(a); 29 U.S.C. § 705(20).

433. Recipients of Federal financial assistance, including the State and DMHSAS, are prohibited from denying a qualified person with a disability any health, welfare, or other social services or benefits on the basis of disability. 45 C.F.R. § 84.52(a)(1).

434. Recipients of Federal financial assistance, including the State and DMHSAS, may not afford a qualified individual with a disability an opportunity to receive health, welfare, or other social services or benefits that is not equal to that offered to people without disabilities. 45 C.F.R. § 84.52(a)(2).

435. Recipients of Federal financial assistance, including the State and DMHSAS, may not provide a qualified person with a disability health, welfare, or other social services or benefits that are not as effective as the benefits or services provided to others. 45 C.F.R. § 84.52(a)(3).

436. Recipients of Federal financial assistance, including the State and DMHSAS, may not provide any health, welfare, or other social services or benefits in a manner that limits or has the effect of limiting the participation of qualified individuals with disabilities. 45 C.F.R. § 84.52(a)(4).

437. Recipients of Federal financial assistance, including the State and DIDD, may not aid or perpetuate discrimination against a person with a disability by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service, to individuals with disabilities. 45 C.F.R. § 84.4(b)(1)(v).

438. Recipients of Federal financial assistance, including the State and DMHSAS, may not otherwise limit a qualified person with a disability in the enjoyment of any right, privilege,

advantage, or opportunity enjoyed by others receiving an aid, benefit, or service. 45 C.F.R. § 84.4(b)(1)(vii).

439. Recipients of Federal financial assistance that employ fifteen (15) or more persons, including the State and DMHSAS, must "provide appropriate auxiliary aids to persons with impaired sensory, manual, or speaking skills, where necessary to afford such persons an equal opportunity to benefit from the service in question." 45 C.F.R. § 84.52(d)(1).

440. Auxiliary aids include interpreters and other aids for persons with impaired hearing. 45 C.F.R. § 84.52(d)(3).

441. In overseeing statewide MI and SUD services and programs, the State and DMHSAS, through its actions and omissions, discriminate against the Plaintiffs Helton and Downs and DRT's constituents solely by reason of their disabilities in violation of Section 504 and its implementing regulations. The State and DMHSAS' discriminatory conduct against these Plaintiffs includes but is not limited to:

a. failing to ensure effective communication for programs, services, and activities;

b. failing to provide them DMHSAS' health, welfare, or other social services benefits on the basis of disability;

c. failing to provide them an opportunity to receive benefits or services that are equal to that afforded to others;

d. failing to provide them with benefits or services that that are not as effective as those benefits or services provided to others;

e. failing to provide benefits or services in a manner that does not limit or has the effect of limiting their participation;

f. aiding or perpetuating discrimination against them by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service, to them;

g. limiting their enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service;

h. failing to provide auxiliary aids and services for effective communication and which are necessary to afford them an equal opportunity to benefit from benefits or services;

i. failing to provide reasonable modifications in policies, practices, and procedures when the modifications are necessary to avoid discrimination;

j. using methods of administration that have the effect of subjecting them to discrimination solely by reason of disability; and

k. failing to establish a Section 504 compliant system.

442. Plaintiffs Helton and Downs have been injured and aggrieved by and will continue to be injured and aggrieved by the State and DMHSAS' discrimination against them.

443. DRT's constituents have been injured and aggrieved by and will continue to be injured and aggrieved by the State and DMHSAS' ongoing discrimination against them.

444. The State and DMHSAS' actions described in this Complaint were intentional and/or were taken with deliberate indifference to the strong likelihood that their acts and/or omissions would result in a violation of the Section 504 rights of Plaintiffs Helton and Downs and DRT's constituents.

445. Because the State and DMHSAS' discriminatory conduct is ongoing, Plaintiffs Helton, Downs, and DRT are entitled to declaratory and injunctive relief, as well as reasonable attorneys' fees and costs in bringing this action.

446. Due to the ongoing emotional distress, stigma, isolation, neglect, and denial of their civil rights caused by the State and DMHSAS, Plaintiffs Helton and Downs are entitled to compensatory relief.

447. Pursuant to the remedies, procedures, and rights set forth in 29 U.S.C. § 794(a) and § 794a, Plaintiff Helton, Downs, and DRT pray for the relief set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that this Court:

1. Exercise and assume jurisdiction over their claims;

2. Enter declaratory relief finding that Defendants' above-described actions violate Title II of the Americans with Disabilities Act and its implementing regulations, and Section 504 of the Rehabilitation Act and its implementing regulations;

3. Order Defendants, their members, partners, agents, employees, successors, and transferees to cease discriminating against Plaintiffs Battle, Wilson, Underwood, Helton, and Downs and DRT's constituents based on their disabilities and solely by reason of their disabilities in the provision of mental health, substance use disorder, and I/DD services;

4. Issue an injunction ordering Defendants to comply with the statutes set forth in this Complaint, including but not limited to, ordering Defendants to:

   a. ensure that Plaintiffs Battle, Wilson, Underwood, Helton and Downs, and DRT's constituents receive communication assessments by a qualified individual who communicates in ASL and other sign language and who has worked with individuals

with I/DD and MI, in order to identify their primary and preferred mode of communication as well as effective modes of communication;

b. ensure that Plaintiffs and DRT's constituents receive effective communication and supports and services in ASL and other sign language in provision of all mental health, substance abuse disorder, and I/DD services;

c. ensure that Defendants give primary consideration to the choice of the Plaintiffs and DRT's constituents when choosing auxiliary aids or services to provide them;

d. ensure that Plaintiffs and DRT's constituents are provided with necessary auxiliary aids and services to achieve effective communication;

e. ensure that Plaintiffs and DRT's constituents are afforded equal and meaningful access to mental health, substance use disorder, and I/DD services with effective communication and reasonable modifications thereto;

f. ensure that Defendants provide oversight at each department level to guarantee the delivery of communication and other supports to Plaintiffs Battle, Wilson, Underwood, Helton, and Downs and DRT's constituents;

g. ensure an adequate network of I/DD, MI, and SUD providers who can meet the needs of Deaf consumers; and

h. ensure the provision of a working plan to so that Deaf consumers of DIDD and DMHSAS receive effective communication for and equal access to programs, services, and activities in the least restrictive environment.

5. Award Plaintiffs Battle, Wilson, Underwood, Helton, and Downs compensatory damages in an amount sufficient to compensate these Plaintiffs' injuries, including but not limited to

emotional distress, isolation, neglect, stigma, and violation of Plaintiffs' civil rights, as a result of Defendants' discriminatory conduct.

6. Award Plaintiffs reasonable attorneys' fees, litigation expenses, and costs pursuant to federal law, including but not limited to the provisions of 42 U.S.C § 12205 and 29 U.S.C § 794A(b); and

7. Grant Plaintiffs such other and further relief as the Court deems to be just, necessary, and equitable.

Date: January 14, 2022

Respectfully Submitted,

DISABILITY RIGHTS TENNESSEE

/s/_Stacie L. Price
Stacie L. Price (TN Bar# 030625)
Disability Rights Tennessee
2 International Plaza, Suite 825
Nashville, TN 37217
(615) 298-1080
staciep@disabilityrightstn.org

Daniel L. Ellis (TN Bar# 028130)
Disability Rights Tennessee
9050 Executive Park Drive, Suite B-101
Knoxville, TN 37923
(865) 670-2944
daniele@disabilityrightstn.org

Jack W. Derryberry, Jr. (TN Bar# 003870)
Disability Rights Tennessee
2 International Plaza, Suite 825
Nashville, TN 37217
(615) 298-1080
jackd@disabilityrightstn.org

Nathan W. Walsh, (TN Bar# 035379)
Disability Rights Tennessee
2 International Plaza, Suite 825
Nashville, TN 37217
(615) 298-1080
nathanw@disabilityrightstn.org

Baker, Donelson, Bearman, Caldwell & Berkowitz

/s/ Christopher J. Barrett
Christopher J. Barrett, (TN Bar #032978)
Baker, Donelson, Bearman, Caldwell & Berkowitz
1600 W. End Avenue
Nashville, TN 37203-3169
(615) 726-5646
cbarrett@bakerdonelson.com