

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

**DOUGLAS CHRISTY**

**Plaintiff,**

**v.**

**THE COMMONWEALTH OF  
VIRGINIA, acting through THE  
VIRGINIA DEPARTMENT OF  
CORRECTIONS**

**Defendant.**

**COMPLAINT**

**CIVIL ACTION NO. 3:17cv778**

**PRELIMINARY STATEMENT**

1. Plaintiff Douglas Christy brings this action under Title II of the Americans with Disabilities Act (“ADA”) and Section 504 of the Rehabilitation Act (“Rehabilitation Act”) against the Commonwealth of Virginia, acting through the Virginia Department of Corrections (“Defendant” or “VDOC”), for its discrimination on the basis of his blindness and its refusal to accommodate his blindness in order to make its programs and services accessible to him.

2. Mr. Christy has been blind since 2012. At all times relevant to this action, Mr. Christy has been incarcerated in the Deerfield Correctional Center (“DCC”)—a Virginia state prison in Capron, Virginia that is owned and operated by VDOC.

3. Notably, DCC is the institution that VDOC has designated to house its most vulnerable prisoners, including older prisoners, prisoners who are ill, and prisoners with disabilities.

4. Despite holding DCC out as a specialized facility for individuals with disabilities, Defendant has repeatedly failed to ensure that the facilities, programs, and services at DCC are accessible to people with visual impairments—as the ADA has required since 1990 and the Rehabilitation Act has required since 1973. As a result of Defendant’s failures, Mr. Christy has been reduced to a second class citizen within DCC, solely because of his blindness. Defendant has added insult to injury by refusing Mr. Christy’s repeated requests for reasonable modifications to its rules, policies, and practices that would permit him an equal opportunity to participate in the programs and services in which inmates at DCC without visual impairments routinely participate.

5. Defendant provides a host of programs and services to those in its custody, including educational and vocational programs. Although he is qualified for such programs and eligible to participate in them, Mr. Christy has been, and continues to be, excluded from these programs and services because he is blind.

6. The practical effect of his exclusion from these programs is that Mr. Christy is unable to earn “good time” credit that would shorten his period of confinement and he is unable to learn job skills necessary to make a successful transition back to the community after his release. Furthermore, his exclusion from educational and vocational programs prevents his assignment to higher-paying jobs within DCC, which would permit him to purchase basic necessities like toiletries and other supplies not provided by DCC, and to have funds to use the DCC payphone to communicate with family and friends.

7. Moreover, Defendant has failed or refused to provide important documents in an alternative format that would advise Mr. Christy about the contents of DCC’s prisoner handbook, announcements posted on the prison’s bulletin board, and other important

information concerning DCC's rules, policies, programs, and safety protocols. Defendant has explicitly denied Mr. Christy's repeated requests that such information be communicated to him orally or in some alternative format by which he could be fully informed. As a consequence, he has been cited for violations of DCC rules about which he had no notice.

8. Additionally, VDOC has denied Mr. Christy's requests for an effective mobility aid, such as a white cane or some other effective assistance, that would permit him to safely move around the prison to access its programs and services. While denying such assistance, VDOC has offered only the services of another prisoner who is not adequately trained to guide people with visual impairments, and who is not available on each occasion when Mr. Christy may need assistance to navigate DCC. VDOC's insistence that Mr. Christy depend on an untrained prisoner is contrary to the objective of the ADA and the Rehabilitation Act, which are designed to support his autonomy and independence.

9. As a consequence, Mr. Christy has missed meals, been unable to use the restroom facilities, missed scheduled appointments, and been unable to make full use of DCC's medical, recreational, communication, and educational services and programs because VDOC has failed to provide him any effective means through which he can move around the prison in the same or similar manner as sighted prisoners. VDOC's failures to comply with federal law, as alleged herein, have put Mr. Christy at risk of physical injury on a daily basis and consigned him to inferior status at DCC because of his blindness.

10. Defendant has also deliberately refused to make reasonable modifications of rules, policies, and practices necessary to ensure that Mr. Christy is able to participate in educational and vocational programs offered at DCC—including re-entry programs through which he could earn "good time credit" to reduce his overall incarceration time. In other words,

Defendant has effectively prevented Mr. Christy from earning an earlier release date—an opportunity granted to all prisoners without visual impairments—solely because of his blindness.

11. In flagrant violation of its obligations under federal law, before denying his request to participate in any of its vocational programs, Defendant admitted, in writing, that it has “no appropriate accommodation[s] for a student who is totally blind.”

12. As a result of Defendant’s unlawful conduct, Mr. Christy has been isolated and excluded from the activities, programs, and services that sighted prisoners are routinely able to access. Mr. Christy lives each day at DCC entirely at the mercy of Defendant, who has routinely ignored his rights under federal law and provided him services that are demonstrably unequal to those offered to other prisoners without visual impairments. He brings this action for damages, declaratory relief, and injunctive relief as a result.

### **JURISDICTION AND VENUE**

13. The matter in controversy arises under the Americans with Disabilities Act, 42 U.S.C. § 12102, *et seq.* (“ADA”) and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, *et seq.* (“Rehabilitation Act”). This Court has jurisdiction over this action under 28 U.S.C. §§ 1331, 1343(a)(3) and (a)(4), 2201, and 2202.

14. Venue properly lies in this District pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to Mr. Christy’s claims occurred in this District.

### **THE PARTIES**

15. Plaintiff Douglas Christy has been blind due to accidental causes since 2012. Because he is substantially limited in his ability to see, Mr. Christy is a qualified individual

with a disability as that term is defined in § 12131(2) of the ADA and pursuant to the applicable definition under the Rehabilitation Act.

16. Mr. Christy has been incarcerated in VDOC since 2012. He was transferred to DCC in 2014. He will complete his sentence, and be released from prison, in 2019.

17. Mr. Christy's visual impairment is noted in Defendant's records, and Defendant regards Mr. Christy as having such an impairment.

18. Mr. Christy has exhausted his administrative remedies with respect to the claims alleged herein.

19. The Virginia Department of Corrections ("VDOC") is an agency of the Commonwealth of Virginia that is responsible for the operation and administration of all adult correctional facilities in Virginia, including DCC. Its principal office is located in Richmond, Virginia. VDOC is a public entity as that term is used in § 12131(1) of the ADA.

20. VDOC is responsible for implementing procedures to ensure that the correctional facilities it operates, including DCC, maintain compliance with the ADA and the Rehabilitation Act. Upon information and belief, VDOC receives federal financial assistance as that term is used in 29 U.S.C. § 794.

21. At all times relevant to this Complaint, Defendant's managers, employees, and/or agents have acted with the consent of, under the control and supervision of, and/or within the scope of their authority as agents of Defendant.

### **FACTUAL ALLEGATIONS**

22. Defendant has repeatedly failed, and in many instances refused, to accommodate Mr. Christy's disability and has excluded Mr. Christy from its programs and services because he is blind, including by a) failing to effectively communicate with him; b) declining his

requests for reasonable modifications, such as a white cane or other effective mobility aid, that would permit him to access services and programs that sighted prisoners routinely access; and c) refusing his requests for reasonable modifications that would permit him to participate in DCC's educational and vocational programs.

23. VDOC primarily communicates with DCC inmates in writing concerning DCC rules, policies, and services. DCC's rules which, if broken, can result in discipline, are codified in a handbook provided to prisoners. Defendant also communicates in writing information concerning prisoner safety and other protocols and guidelines. Important announcements—from schedule changes to information about meals—are posted, in writing, on DCC's bulletin boards. Certain communications from prisoners to DCC—including complaints, formal grievances, and other requests for assistance—are also required to be submitted in writing, and DCC similarly provides its response to any such requests in writing.

24. Defendant has failed to provide Mr. Christy, who is blind and thus cannot read Defendant's printed documents and communications, any alternative formats, auxiliary aids, or services necessary for him to effectively receive the information it communicates to sighted persons incarcerated in DCC.

25. On a number of occasions, Mr. Christy has asked DCC personnel to read these communications to him out loud, or to convey the information other than in writing he cannot read, on an as-needed basis. Despite repeated requests, Defendant has refused to provide audio recordings or a qualified individual to read the relevant information to Mr. Christy.

26. VDOC does not provide Mr. Christy adequate notification of important events and safety information communicated to other prisoners in writing. DCC staff have refused to read the contents of DCC's handbook to Mr. Christy or to identify and provide any alternative

mechanism through which Mr. Christy can effectively receive information from DCC. As a result, Mr. Christy often learns about DCC's rules and policies only after he has been notified that he has violated them.

27. Mr. Christy's blindness occurred in 2012, shortly before his incarceration. Since incarcerated at DCC, he has expressed a strong interest in learning Braille.

28. Despite his requests, Defendant has failed or refused to facilitate his access to Braille instruction and Braille writing utensils and materials. As a consequence, Defendant has foreclosed Mr. Christy's ability to write to family and friends outside DCC and to continue his education in the hope of securing gainful employment upon release.

29. Basic tasks and activities like going to the restroom, attending appointments, or walking to the cafeteria for meals are difficult for Mr. Christy because VDOC has denied his request for an effective mobility aid, such as a white cane or some other type of effective assistance, that would permit Mr. Christy to safely and independently move around the prison to access its programs and services.

30. Instead, VDOC has occasionally assigned another prisoner to accompany and guide Mr. Christy around DCC. This approach is not effective because the prisoners are not trained to guide people with vision impairments and because such assignments are considered among the least skilled, lowest-status jobs available at DCC, with the lowest prison wages as compensation.

31. As a result, many of these untrained prisoners are insensitive to the effect of their behavior on Mr. Christy and do not know how to properly guide a person with visual impairments, do not understand how to alert Mr. Christy to potential danger or avoid obstructions, and do not understand the peril in which he is placed if unexpectedly stranded

without assistance in an unfamiliar area of DCC.

32. On a number of occasions, these untrained prisoners have walked Mr. Christy into walls or other objects, injuring him. On other occasions, they have stranded him in unfamiliar places by walking away without warning. Defendant has ignored Mr. Christy's requests that the prisoners assigned to him receive basic training in assisting the blind.

33. Moreover, the availability of these untrained prisoners to Mr. Christy is sporadic. If the prisoner is busy or just does not want to escort Mr. Christy at a time when he has to use the restroom, meet with a counselor, or attend another appointment, Mr. Christy is left to fend for himself. There are no consequences if the prisoner declines to escort him and no alternative processes through which he can navigate DCC. Mr. Christy has missed meals and appointments because no one was available or willing to escort him.

34. Defendant's classes and programs use printed materials that are not available in an accessible format to individuals with visual impairments. Defendant does not provide class materials or instruction in Braille and has denied Mr. Christy's requests that educational information contained in Defendant's printed materials be relayed to him orally.

35. In fact, Defendant has refused, and in some instances ignored, Mr. Christy's repeated requests that it make some reasonable modifications so that he can participate in DCC's vocational programs. Mr. Christy submitted applications to participate in each of DCC's vocational programs. In response to his requests for enrollment, Defendant acknowledged, in writing, that "[t]he facility/DCE has no Braille for any vocational program...and no appropriate accommodation for a student who is totally blind," as well as that "[t]he facility/DCE has no resources for accommodat[ing] a person who's totally blind..." *See* Exhibit 1, VA Dep't of Corrections, Deerfield Correctional Center Offender



Request Forms, June 30, 2017.

36. Mr. Christy has similarly been excluded from participating in re-entry programs, available to sighted persons incarcerated in DCC, because he is blind. In addition to being unable to access these programs, which provide valuable information to assist individuals in their transition from incarceration to the community, Mr. Christy is unable to earn “good time credit” for participating in these programs.

37. Good time credit that Mr. Christy could receive from participating in these programs would reduce his overall incarceration time. *See* VA Code § 53.1-197. Accordingly, absent the modifications Defendant has been unwilling to provide, Mr. Christy will serve a longer sentence at DCC than similarly-situated, sighted prisoners who are able to take advantage of these programs simply because he is blind.

#### **INJURY TO PLAINTIFF**

38. By treating Mr. Christy less favorably and excluding him from programs and services because of his blindness, by refusing to comply with its obligations to ensure effective communication with him, and by failing to provide reasonable modifications in rules, policies, and practices for Mr. Christy, as outlined herein, Defendant has discriminated against Mr. Christy on the basis of his disability.

39. Mr. Christy has suffered, and continues to suffer, a range of injuries because of Defendant’s conduct. He has been prevented from receiving important information regarding Defendant’s programs, services, and safety protocols because the information has not been conveyed to him in an accessible format.

40. Further, he has been isolated and excluded from Defendant’s educational and vocational programs, including those programs that could reduce the amount of time that he

spends in custody.

41. Because Defendant has refused to provide Mr. Christy an effective mobility aid or assistance, he has sustained physical injuries as a result of crashing into various objects, has missed meals and appointments, and has felt humiliated and helpless because he is unable to navigate around the prison in the same manner as sighted prisoners.

42. In particular, VDOC's refusal to provide him any means through which he can move safely around the prison, and the physical injury that he has suffered as a result, has left him vulnerable, overly dependent on the whims of other individuals incarcerated in DCC, and has caused him to fear for his own safety and security. Mr. Christy has suffered, and continues to suffer, humiliation, frustration, embarrassment, and emotional distress as a direct result of the physical injuries he has sustained.

43. Defendant's unlawful actions, as described above, were intentional, willful, and taken in deliberate indifference to Mr. Christy's statutorily protected rights. Defendant's admission that it has no capacity to address the needs flowing from Mr. Christy's blindness, for example, demonstrates a knowing and flagrant violation of its obligations under federal law.

44. Unless enjoined, Defendant will continue to engage in unlawful acts and maintain its discriminatory policies and/or practices. Mr. Christy is now suffering, and will continue to suffer, irreparable injury from Defendant's unlawful conduct, policies, and practices unless relief is provided by this Court.

**CAUSES OF ACTION**

**FIRST CAUSE OF ACTION**

**(Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131, *et seq.*)**

45. Mr. Christy realleges and incorporates by reference all of the allegations set forth in paragraphs 1 through 44 above.

46. Mr. Christy is blind and is thus a qualified individual with a disability as defined by the ADA.

47. As a state prisoner, Mr. Christy meets the essential eligibility requirements for the receipt of services and participation in programs and activities provided by Defendant.

48. Through Defendant's actions as described above, Defendant discriminated against Mr. Christy on the basis of his disability, in violation of the ADA.

49. Under the ADA, Defendant is prohibited from excluding Mr. Christy from participation in, or denying him the benefit of its services, programs, and activities on account of, his disability. 28 C.F.R. § 35.130(a). Defendant is also prohibited from providing an aid or service that is not as effective in affording equal opportunity to obtain the same result as that provided to others. *Id.* at § 35.130(b)(1)(i)-(iii), (b)(1)(vii).

50. Pursuant to the ADA, Defendant is required to ensure that its communications with Mr. Christy are as effective as communications with sighted individuals in its custody, including through the provision of auxiliary aids. 28 C.F.R. § 35.160(a)(1), (b)(1).

51. Under the ADA, Defendant is required to make reasonable modifications in policies, practices, and/or procedures when the modifications are necessary to avoid discrimination on the basis of disability and would not fundamentally alter the nature of its programs, services, or activities. 28 C.F.R. § 35.130(b)(7).

52. By failing to make any provisions to ensure that Mr. Christy can communicate with and receive information from Defendant; declining to provide him reasonable modifications, such as a white cane or other effective mobility assistance, that would permit him to access services and programs that sighted prisoners routinely access; and failing to provide modifications that would permit him to participate in DCC's educational and vocational programs, Defendant has denied and continues to deny Mr. Christy meaningful access to its services, benefits, activities, and programs because of his disability.

53. Defendant can provide access to its programs and services in a manner that would not result in a fundamental alteration of its programs and services, but has failed and/or refused to provide any such modification.

## **SECOND CAUSE OF ACTION**

**(Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, *et seq.* )**

54. Plaintiff realleges and incorporates by reference all of the allegations set forth in paragraphs 1 through 44 above.

55. Mr. Christy is blind and is thus a qualified individual with a disability within the meaning of the Rehabilitation Act.

56. Upon information and belief, Defendant receives federal financial assistance within the meaning of the Rehabilitation Act.

57. As a state prisoner, Mr. Christy meets the essential eligibility requirements for the receipt of services and participation in programs and activities provided by Defendant.

58. The Rehabilitation Act prohibits Defendant from denying Mr. Christy equal access to its benefits and services, and equal opportunity to participate in its programs, on the basis of disability.

59. Defendant is required under the Rehabilitation Act to ensure effective communication with individuals, like Mr. Christy, who are blind. This obligation includes furnishing effective auxiliary aids.

60. Under the Rehabilitation Act, Defendant is required to make reasonable modifications in policies, practices, and/or procedures where the modifications are necessary to avoid discrimination on the basis of disability and would not fundamentally alter the nature of the programs, services, or activities.

61. Through the conduct described herein, Defendant failed to ensure effective communications with Mr. Christy in violation of the Rehabilitation Act.

62. By failing to make any provisions to ensure that Mr. Christy can communicate with and receive information from Defendant; declining to provide him reasonable modifications, such as a white cane or other effective mobility assistance, that would permit him to access services and programs that sighted prisoners routinely access; and failing to provide modifications that would permit him to participate in DCC's educational and vocational programs, Defendant has denied and continues to deny Mr. Christy meaningful access to its services, benefits, activities, and programs because of his disability.

63. Defendant can provide access to its programs and services in a manner that would not result in a fundamental alteration of its programs and services, but has failed to provide any such modification.

**REQUEST FOR RELIEF**

WHEREFORE, Plaintiff prays that this Court grant him the following relief:

- a. Enter a declaratory judgment finding that the foregoing actions of Defendant violate 29 U.S.C. § 794 and 42 U.S.C. § 12132;
- b. Enter a preliminary and permanent injunction directing Defendant to take all affirmative steps necessary to remedy the effects of the illegal, discriminatory conduct described herein and to prevent similar occurrences in the future;
- c. Retain jurisdiction of this case to ensure Defendant has fully complied with any orders of the Court;
- d. Award reasonable compensatory damages to Plaintiff, in an amount to be determined by a jury;
- e. Award Plaintiff costs and reasonable attorneys' fees; and
- f. Award such other and further relief as the Court deems just and proper.

**JURY DEMAND**

Plaintiff hereby demands a trial by jury.

Dated: November 21, 2017

Respectfully submitted,  
DOUGLAS CHRISTY,  
By Counsel

/s/ Michael G. Allen  
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