



PENNSYLVANIA INSTITUTIONAL LAW PROJECT

www.pilp.org

718 Arch Street, Ste. 304S
Philadelphia, PA 19106
T: 215-925-2966
F: 215-925-5337

247 Fort Pitt Blvd, 4th Fl.
Pittsburgh, PA 15222
T: 412-434-6004

115 Farley Circle,
Suite 110
Lewisburg, PA 17837
T: 570-661-9045

October 16, 2023

Superintendent Joseph Terra
SCI Phoenix
1200 Mokychie Drive
Collegeville, PA 19426

Medical Director Anthony Letizio
SCI Phoenix
1200 Mokychie Drive
Collegeville, PA 19426

RE: James Savage #GS0572

Dear Superintendent Terra and Dr. Letizio:

We are writing on behalf of the Pennsylvania Institutional Law Project regarding our client, James Savage #GS0572, who has been incarcerated in the Pennsylvania Department of Corrections (“DOC”) since 2006. Our review of Mr. Savage’s medical records and our conversations with Mr. Savage raise serious concerns for us regarding his lack of appropriate disability accommodations at State Correctional Institution (“SCI”) Phoenix. We ask that you take immediate action to provide accommodations to Mr. Savage to avoid violating the Americans with Disabilities Act (“ADA”).

Mr. Savage is legally blind, a fact that is well-documented in his DOC medical records. Mr. Savage also has chronic pain from a back injury, which causes loss of feeling in his legs. He can stand for only short periods of time and his ability to walk is severely limited. As a result, he relies on a wheelchair to move around the prison. Because of his vision and mobility impairments, he requires disability accommodations that are not currently being provided to him.

Mr. Savage’s disabilities entitle him to the protection of Title II of the ADA, which prohibits public entities, including prisons, from discriminating against qualified individuals with disabilities in the provision of programs, services, and activities. *See* 42 U.S.C. § 12132, *et seq.* The phrase “service, program, or activity under Title II...is extremely broad in scope and includes anything a public entity does.” *Furgess v. Pa. Dep’t of Corr.*, 933 F.3d 285, 289 (internal quotations omitted). Public entities have an affirmative duty under the ADA to “make reasonable modifications in policies, practices, or procedures...to avoid discrimination on the basis of disability.” *See* 28 C.F.R. § 35.130(b)(7). The ADA also requires a public entity to “take appropriate steps to ensure that communications with [individuals] with disabilities are as effective

as communications with others” and to provide “appropriate auxiliary aids and services” so that individuals with disabilities have “an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity.” *See* 28 C.F.R. § 35.160(a)(1), (b)(1). In order to fully participate in the programs, services, and activities at SCI Phoenix, Mr. Savage requires accommodations that will allow him to access written communications, navigate his physical environment, and that clearly identify him as a person with a visual impairment.

The right to accommodation of visual impairments in a carceral setting is well-established and Mr. Savage’s current situation falls well below the established standards. *See e.g., Thompson v. N.Y. State Corr. & Cmty. Supervision*, No. 22-CV-6307-FPG, 2022 U.S. Dist. LEXIS 177723, at *6, *24 (W.D.N.Y. Sep. 28, 2022) (stating that the plaintiff established a plausible failure-to-accommodate claim under the ADA and Rehabilitation Act based on the correctional facility’s denial of “corrective lenses, a support cane, visor/sunglasses, magnifiers, ‘CCTV’, cassette player and cassettes and ‘large print’”); *James v. Miller*, No. 2:21-cv-3984, 2021 U.S. Dist. LEXIS 158495, at *13 (S.D. Ohio Aug. 23, 2021) (finding that the plaintiff “alleged sufficient facts to state a claim for violation of the ADA and RA” based on the correctional facility’s denial of “tinted lens glasses, lowered brightness of dorm lighting at all times, [and] bottom range and bunk restrictions”); *Williams v. Ill. Dep’t of Corr.*, No. 97 C 3475, 1999 U.S. Dist. LEXIS 18190, at *24 (N.D. Ill. Nov. 16, 1999) (granting summary judgment to plaintiff and ordering the Illinois Department of Corrections to accommodate plaintiff’s visual impairment by providing access to library materials, educational programs, and navigational assistance).

Access to Written Communications and Devices

As a result of his visual impairment, Mr. Savage is obviously unable to read printed communications, written announcements or signage within the facility. Troublingly, DOC staff have required him to sign paperwork that he is unable to read. Moreover, because his visual impairment prevents him from effectively reading and writing, he does not have access to the DOC’s grievance, sick call request and disability accommodation request procedures. Currently, Mr. Savage must rely on other incarcerated people to complete these forms and reveal his private information to them. Mr. Savage has previously requested assistance with these tasks from certified peer specialist (CPS) workers, a request that has been rejected on the basis that it is outside the scope of a CPS worker’s job.

His visual impairment also makes it impossible for him to independently use the facility kiosks or a DOC-issued tablet because they do not offer accessibility features. To use these systems, he must reveal his personal information and pin to other incarcerated people. To address these issues, he requires the following accommodations: a speech to text device that would allow Mr. Savage to dictate and print his grievances, sick call slips, requests to staff, and disability accommodation requests; a kiosk or kiosk alternative with screen reader functionality; and a tablet with the accessibility settings turned on and visual assistance apps. These accommodations are fully encompassed by the ADA’s requirement to provide “auxiliary aids and services” to assist in communication. *See* 28 C.F.R. § 35.104.

Management of Mr. Savage's Physical Environment and Daily Life

Several activities of daily life are inaccessible to Mr. Savage under the current conditions of his confinement in the DOC. Mr. Savage cannot use the code lock that is issued to most incarcerated people in the DOC. As a consequence, he is unable to secure his property, leaving him vulnerable to theft. Moreover, he cannot read the clocks that are readily available to other incarcerated people. He had a talking watch, provided as a disability accommodation at a previous DOC facility, but since the watch batteries died in June, he has struggled to obtain a working talking watch. He has instead at times been provided a vibrating watch for deaf individuals, which he cannot use. As you are undoubtedly aware, timeliness is crucial to many activities in prison life or an individual risks missing out on programs entirely or receiving a misconduct. The lack of a functioning talking watch has hindered Mr. Savage in his participation in activities and his adherence to facility-mandated schedules. He is at constant risk of missing count or appointments and would miss meals if other incarcerated people did not assist him. We request that Mr. Savage be provided a keyed lock to secure his possessions, as well a working talking watch, along with a plan for immediate access to new batteries as needed in the future.

Moreover, Mr. Savage's cell is not adequately accessible to him as a wheelchair user. His wheelchair frequently becomes stuck under the sink or the table because his cell lacks space to maneuver a wheelchair. Because his cell is not truly wheelchair-accessible, at times he avoids using his wheelchair within his cell. As a result, he has fallen and injured himself several times. Additionally, because he is unable to perceive obstacles in the space around him, he has injured himself when moving around his cell or sitting up in bed. He has even fallen and struck his eyes on objects. Mr. Savage requires a walker for use in spaces that are not wheelchair-accessible; a guide stick – such as a white cane – for navigating; glasses to protect his eyes from injury; and placement in a cell designed for two people, in combination with a medically-issued Z-code for permanent placement without cellmates.

Mr. Savage also has chronic back pain from a past injury. Because the DOC-issued mattress and pillow are not supportive enough for his injured back, he experiences increased pain during and after sleep. Mr. Savage therefore requires a second mattress and a second pillow and/or wedge pillow.

Acknowledgement and Clear Identification of Mr. Savage's Disabilities

As Mr. Savage's visual impairment is not always readily apparent to a casual observer, Mr. Savage's visual disability is frequently questioned by non-medical staff. While his visual disability is well-documented within his medical records and has been accommodated at other DOC facilities, this information has not been clearly communicated to staff at SCI Phoenix. Clear identification of disability in an institutional setting falls within the accommodations required by the ADA. *See e.g., Brady v. Ill. Dep't of Corr.*, No. 23-cv-00295-SMY, 2023 U.S. Dist. LEXIS 96824 (S.D. Ill. June 2, 2023). Confusion among staff regarding Mr. Savage's visual impairment places Mr. Savage at risk for inappropriate disciplinary interactions. The DOC must take steps to remedy this issue such as signage on his cell door that clearly identifies him as blind; clear and readily apparent notation on his inmate ID that identifies him as blind; and clear and readily apparent identification on his clothing that identifies him as blind.

In light of the serious ADA violations described above, we ask that you take immediate action to provide Mr. Savage with appropriate accommodations for all of his disabilities. We recognize that providing accommodations for individuals with disabilities requires careful individual specific consideration and welcome the opportunity to discuss the best way to meet Mr. Savage's needs further. We ask that you respond in writing to this letter within thirty days. If you have any questions or concerns, you may contact Alexandra Morgan-Kurtz (amorgan-kurtz@pilp.org) or Evangeline Wright (ewright@pilp.org).

Sincerely,



Alexandra Morgan-Kurtz
Deputy Director



Evangeline Wright
Staff Attorney

cc: Timothy Holmes, tholmes@pa.gov
Chase DeFelice, chdefelice@pa.gov