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SENT VIA CERTIFIED MAIL

August 7, 2007

Lucy D. Hadi, Secretary
Florida Department of Children and Families
1317 Winewood Blvd.
Building 1, Room 202
Tallahassee, FL 32399-0700

RE: P.C. on behalf of E. C. v. Florida Department of Children and Families
OCR Docket No. 05-36562, Violation Letter of Findings

Dear Secretary Hadi:

The Office for Civil Rights (OCR), U.S. Department of Health and Human Services (HHS) has completed an investigation into the Florida Department of Children and Families (FDCF). The subject investigation was conducted under Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131-12134, and its implementing regulations as found at 28 C.F.R. Part 35 (Title II or ADA) and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulations as found at 45 C.F.R. Part 84 (Section 504). OCR's investigation monitored whether FDCF complied with a 2000 Resolution Agreement between OCR and FDCF and remedied deficiencies reported to FDCF by OCR in 2002. The Resolution Agreement provides that OCR may issue a formal Violation Letter of Findings and notify the Attorney General if FDCF fails to correct deficiencies within thirty days after being notified of the deficiency by OCR. OCR's investigation found that, seven years after signing the original Agreement and five years after being notified of deficiencies, FDCF has yet to comply with the terms of the Resolution Agreement and failed to correct the deficiencies as required by the 2002 notification letter. Therefore, pursuant to Section II(E) of the 2000 Resolution Agreement, OCR is issuing to FDCF this Violation Letter of Findings and notifying the Assistant Attorney General of FDCF's violations of Title II and Section 504 by forwarding a copy of this Letter of Findings.

Beginning on page 21 of this letter, we clarify what remedial steps FDCF must take to remedy the violations of Title II and Section 504 that OCR found. Because FDCF has failed to avail itself of two previous opportunities to voluntarily come into compliance,

the remedial steps include additional measures to ensure that FDCF comply with a new Agreement. Those measures include the following:

- Submit a detailed Action Plan within thirty (30) days of receipt of this letter which details how FDCF will bring itself into compliance with Title II and Section 504;
- Meet with OCR within six weeks of receipt of this letter to discuss the Action Plan and OCR's concerns about FDCF's ongoing non-compliance with Title II, Section 504 and the Resolution Agreement;
- When the Action Plan is agreed upon, redraft the terms of the Action Plan into a new Voluntary Compliance Agreement consistent with the requirements of 28 C.F.R. § 35.173(b);
- Provide for an outside Plan Monitor devoted full-time to ensure that FDCF is implementing the necessary corrective action; and,
- Establish policies detailing how FDCF will monitor FDCF's services to persons who are deaf or hearing impaired.

If FDCF declines this third opportunity to voluntarily comply with Title II and Section 504, or if FDCF's noncompliance cannot be otherwise corrected, compliance may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law, including a recommendation that the Department of Justice bring appropriate proceedings to enforce any rights of the United States under any law or other contractual undertaking.

BACKGROUND

Since March of 2000, OCR has received a series of three complaints alleging that FDCF violates Section 504 and Title II because it does not provide appropriate auxiliary aids or qualified sign language interpreters necessary for effective communication with the Deaf. The first complaint was filed by L.N. OCR investigated the allegations pursuant to Title II and implementing regulations at 28 C.F.R. Part 35, and Section 504 and implementing regulations at 45 CFR Part 84. Because, as provided at Florida Statutes § 20.19, FDCF is responsible for delivering, or providing for the delivery of, all family services/programs/activities on behalf of the State; it is a public entity covered under Title II. In addition, because FDCF is a recipient of Federal financial assistance from HHS, it also falls within the jurisdiction of Section 504. Accordingly, OCR has the authority to assess FDCF's compliance with both statutes.

After its investigation, OCR found in December of 2000 that FDCF violated Title II and Section 504 by failing to secure appropriate auxiliary aids and services necessary for

effective communication when communicating with the Deaf. Pursuant to 28 C.F.R. § 35.127(a), OCR attempted informal resolution of the violation finding by offering FDCF the opportunity to agree to a Resolution Agreement prior to the issuance of formal Violation Letter of Findings. The Agreement stated that the evidence established “FDCF violated its obligations” and provided that OCR would formally issue its findings if FDCF failed to comply with the Agreement, following a notice and opportunity to cure the deficiency. FDCF entered into the Resolution Agreement with OCR in November of 2000 to resolve the complaint (OCR Reference Number 00-02441) and to correct the deficiencies found by OCR. In the Resolution Agreement FDCF promised to complete fourteen corrective measures to correct the violations of Title II and Section 504.

In August of 2001, S.O. filed the second complaint (Reference Number 02-02518) alleging that FDCF failed to provide appropriate auxiliary aids or services when necessary to ensure effective communication with a deaf person in violation of Title II and Section 504. After an investigation, OCR issued the 2002 LOF, which found that FDCF had violated its obligations under the foregoing authorities. Specifically, OCR found that FDCF had violated Title II and implementing regulations at 28 C.F.R. §§ 35.130(a), (b)(1)(ii)-(iii), 35.160, and Section 504 and implementing regulations at 45 C.F.R. §§ 84.4(a), (b)(1)(i)-(iii) and 84.52(a)(1)-(3), (d)(1)-(3). OCR’s 2002 LOF also found that FDCF failed to comply with the 2000 Resolution Agreement. Citing the cure provision in Paragraph “E” of the 2000 Resolution Agreement, the 2002 LOF required FDCF to implement necessary measures to correct the deficiencies in FDCF’s compliance with the Resolution Agreement.

Pursuant to the cure provisions in Section II(E) of the Resolution Agreement, FDCF was provided 30 days to correct the deficiencies by taking twelve corrective measures adopted from the provisions of the 2000 Resolution Agreement. The 2002 LOF noted the following language in Section II(E):

If HHS receives documentation or other evidence that reveals that the FDCF has not complied with any provision set forth in Sections III and IV of this Agreement, HHS may issue to the FDCF a Violation Letter of Findings. Before issuing a Violation Letter of Findings, HHS shall notify FDCF of the deficiencies and allow 30-days to correct the deficiencies. Should the FDCF fail to correct the deficiencies in a timely manner and HHS issues to the FDCF a Violation Letter of Findings, HHS shall pursuant to 28 C.F.R. § 35.173 notify the Assistant Attorney General by forwarding a copy of the Letter of Findings for any action authorized by law to be taken to secure compliance.

Under the terms of Section II(E) and the language of the 2002 LOF, FDCF had thirty days to correct the deficiencies and establish that it was implementing all twelve corrective measures required by the 2002 LOF. Since that time, FDCF and OCR have corresponded

numerous times. FDCF sent OCR documents on January 15, 2003, October 9, 2003, January 21, 2004 and May 14, 2004 to establish the steps it was taking to implement the corrective measures required by the 2002 LOF and the 2000 Resolution Agreement. During that time, however, OCR never formally determined whether FDCF's progress was sufficient or whether FDCF's failures to take necessary measures constituted a failure to voluntarily come into compliance and correct deficiencies in a timely manner as required by Section II(E) of the Resolution Agreement.

In April of 2005, OCR received a third complaint (OCR Reference Number 05-36562) which alleges that FDCF failed to provide necessary auxiliary aids or interpreter services to ensure effective communication with a deaf individual, E.C. The allegations in E.C.'s complaint suggest that the denial of effective communication occurred because FDCF had not taken the corrective actions required by the 2002 LOF and the 2000 Resolution Agreement. Because OCR's investigation of E.C.'s complaint requires OCR to determine FDCF's compliance with the corrective measures detailed in the September 2002 LOF and the 2000 Resolution Agreement, OCR administratively closed L.N.'s and S.O.'s complaints in October of 2006. While investigating E.C.'s complaint, OCR sent FDCF data requests on August 18, 2005 and February 24, 2006. FDCF responded to these data requests on December 19, 2005 and April 10, 2006. While one purpose of these data requests was to investigate the allegations concerning E.C., the data requests also sought to determine what actions FDCF had taken since September 13, 2002 to correct the deficiencies found in the 2002 LOF concerning FDCF's implementation of the 2000 Resolution Agreement.

OCR's review found that FDCF has never implemented the terms of the Resolution Agreement and has yet to remedy the deficiencies as required by the 2002 LOF. Accordingly, pursuant to Section II(E) of the Agreement, OCR is issuing a Violation LOF to FDCF. The 2000 LOF is attached to this letter for your convenience and the Findings of Fact and Conclusions of Law, in which OCR found that FDCF "violated its obligations under section 504/title II" by failing to provide interpretive services," are incorporated by reference into this Violation LOF. OCR's Findings of Fact and Conclusions of Law establish that FDCF violated Title II and implementing regulations at 28 C.F.R. §§ 35.130(a), (b)(1)(i)-(iii), 35.160(a)-(b), and Section 504 and implementing regulations at 45 C.F.R. §§ 84.4(a), (b)(1)(i)-(iii) and 84.52(a)(1)-(3), (d)(1)-(3).

DISCUSSION/ANALYSIS

Evidence gathered during OCR's investigation shows that FDCF has not taken the corrective action required by the 2002 LOF or implemented the corrective measures required by the 2000 Resolution Agreement.

1. **FDCF failed to implement appropriate procedures to provide sign language interpreters as required by Paragraph "A" of the 2002 LOF.**

Paragraph "A" of the 2002 LOF required FDCF to correct FDCF's failure to comply with Sections III(A) and III(B) of the 2000 Resolution Agreement. Paragraph "A" required FDCF to adopt and implement appropriate procedures to provide sign language interpreters and auxiliary aids when necessary to ensure effective communication.

FDCF sent OCR a draft of a new policy on January 15, 2003 and stated that the new policy would be effective by April of 2003. FDCF's letter from May 14, 2004 stated that the new policy was being revised due to departmental restructuring and that a new draft would be forwarded to OCR after revisions were finalized. OCR has no record of having received a new draft of the policy. Instead, in February of 2005, FDCF issued its new policy in final form. FDCF's new policy, CFOP 60-10, is vague and in large part simply requires all FDCF organizational units to comply with the provisions of the 2000 Resolution Agreement. In an interview with OCR in June of 2006, FDCF's Civil Rights Coordinator explained that the FDCF policy is supplemented by local Auxiliary Aids Plans, which provide procedural details such as how to contact an interpreter for the hearing impaired. FDCF's Civil Rights Coordinator claimed that FDCF institutions are required to provide copies of their Auxiliary Aids Plans to FDCF Civil Rights and that FDCF Civil Rights checks the plans for compliance with the Resolution Agreement.

OCR does not find fault with FDCF's strategy to have a vague departmental policy supplemented by required local plans. However, such a strategy necessitates that either the local and state plans be implemented together, so that all staff know the general requirements of the state policy, or that the local Auxiliary Aids Plan incorporate the general requirements of the state policy. Otherwise, the local Auxiliary Aids Plan will not supplement the state policy; it will replace the state policy.

Evidence gathered during OCR's investigation suggests that this has been the case and FDCF staff persons are unfamiliar with the new state policy, CFOP 60-10. As part of the current investigation, OCR interviewed sixteen staff persons who work at two FDCF institutions. The majority of the people we interviewed were unaware of CFOP 60-10, and if they were aware of any procedures concerning the provision of auxiliary aids to the hearing impaired, they were only aware of the local Auxiliary Aids Plan. While the local Auxiliary Aids Plans contain important information about how to obtain interpreters, they do not contain standards located within CFOP 60-10, such as interpreter certification, when to communicate via the client's preferred method of communication, what procedures to use during intake and when to notify persons of their right for appropriate auxiliary aids.

Thus, OCR finds that while FDCF has created a new policy, FDCF has failed to adequately implement the policy because FDCF staff is unaware of the policy and unsure how to integrate the state policy with local Auxiliary Aids Plans. OCR therefore finds that FDCF has failed to correct deficiencies in its compliance with Sections III(A) and III(B) of the Resolution Agreement as required by Paragraph "A" of the 2002 LOF.

2. FDCF failed to implement Paragraph "B" of the 2002 LOF which required FDCF to appoint ADA/504 Coordinators and ensure that they formulate and implement policies and procedures for sign language interpreters and auxiliary aids.

Paragraph "B" of the 2002 LOF required FDCF to correct FDCF's failure to comply with Section III(C) of the 2000 Resolution Agreement, which required FDCF to designate a state ADA/Section 504 Coordinator. Paragraph "B" of the 2002 LOF required FDCF to appoint ADA/504 Coordinators for all FDCF districts, ensure that all Coordinators are familiar with Title II and Section 504, and ensure that the Coordinators formulate and implement policies, practices, and procedures as required by the 2002 LOF and the provisions of the 2000 Resolution Agreement.

In OCR's August 18, 2005 data request, OCR requested the names and contact information of all ADA/504 Coordinators statewide. OCR also requested a response and supporting documentation establishing whether the ADA/504 Coordinators are familiar with Title II and Section 504, and a response and supporting documentation establishing whether, when and how the ADA/504 Coordinators responsible for Florida State Hospital (FSH) and the North Florida Evaluation and Treatment Center (NFETC) had implemented the requirements of the 2000 Agreement. FDCF did not respond to this data request. In OCR's February 24, 2006 data request, OCR requested the same information. FDCF again did not provide a list of all ADA/504 Coordinators or their contact information. FDCF's response claimed that all Coordinators were familiar with the requirements of Title II and Section 504, but included no documentation. FDCF stated that the Coordinator position responsible for FSH was vacant and FDCF stated that two persons shared the ADA/504 Coordinator responsibilities for NFETC, and the response designated who these persons were.

FDCF's refusal to respond to two direct inquiries to determine its compliance with the 2002 LOF raises serious concerns. The 2000 LOF and the 2002 LOF found FDCF to be out of compliance with Title II and Section 504 and the 2002 LOF found FDCF to have failed to implement the actions FDCF had promised to take in the 2000 Resolution Agreement. The 2002 LOF and subsequent communication with FDCF were a part of our agency's efforts to bring FDCF back into a state of compliance. This effort to secure voluntary compliance requires the cooperation of FDCF in providing OCR with the documentation it needs to determine whether FDCF has taken the corrective action deemed necessary to secure compliance. FDCF's refusal to

provide OCR with a list of all ADA/504 Coordinators statewide—when such information should be readily available to FDCF—could be interpreted as a refusal to cooperate with OCR in this matter as required by 28 CFR § 35.171(a)(3)(i) and 45 CFR § 84.61, which incorporate by reference the procedure provisions of 45 CFR §§ 80.6(b) and 80.6(c). However, FDCF’s failure to provide us with this list after two direct requests also indicates that FDCF has failed to fill all these positions as required by Paragraph “B” of the 2002 LOF.

OCR’s interviews during this investigation support the finding that FDCF failed to fulfill the requirements of Paragraph “B” of the 2002 LOF. During OCR’s investigation, OCR interviewed several staff persons at NFETC, including the Administrator and the person designated by FDCF as the ADA/504 Coordinator. OCR asked each interview subject to identify the ADA/504 Coordinator responsible for NFETC. None of the staff persons knew who had the ADA/504 Coordinator responsibilities, including the person designated by FDCF as being the ADA/504 Coordinator. The Administrator of NFETC thought the ADA/504 Coordinator had died in 2004 and that no one had been reassigned those responsibilities. Apparently FDCF designated someone as the ADA/504 Coordinator for NFETC but failed to inform him or the Administrator of these responsibilities. Simply designating people as ADA/504 Coordinators does not fulfill the requirements of Paragraph “B” as it also required the Coordinators to be able to formulate and implement policies, practices and the provisions of the 2000 Resolution Agreement. ADA/504 Coordinators cannot fulfill these responsibilities when they and their supervisors do not know they have them.

Based on FDCF’s refusal to respond to our inquiries as well as the evidence obtained during our investigation of this case, OCR finds that FDCF has not implemented Paragraph “B” of the 2002 LOF. OCR therefore finds that FDCF has failed to correct deficiencies in its compliance with Sections III(C) of the Resolution Agreement as required by Paragraph “B” of the 2002 LOF.

3. FDCF has not established monitoring procedures and thus failed to implement Paragraph “C” of the 2002 LOF and III(D) of the 2000 Resolution Agreement.

Paragraph “C” of the 2002 LOF directed FDCF to correct FDCF’s failure to comply with Section III(D) of the Resolution Agreement, which required that FDCF establish procedures to ensure monitoring of its services to clients, family members and/or service providers who are deaf or hearing impaired. The monitoring is required to ensure that FDCF interpreters are available to assist individuals with a hearing impairment on a 24-hour basis.

In OCR’s August 18, 2005 data request, OCR requested a response and supporting documentation establishing whether, when and how DCF established procedures to

monitor the provision of interpreter services on a 24-hour basis. FDCF's response on December 19, 2005 did not address how FDCF had created monitoring procedures, it only stated that FSH has an employee on call who can respond to an emergency. On February 24, 2006, OCR requested the same information from FDCF. FDCF's April 10, 2006 response stated that "Auxiliary Aids Plans for NFETC and FSH were provided to staff as a resource tool" and that "staff will contact civil rights officers as needed."

Neither of FDCF's responses suggests that FDCF has implemented monitoring procedures. Relying on staff to contact civil rights officers "as needed" is an insufficient monitoring procedure, as staff will likely only seek assistance after a problem has arisen and the purpose of monitoring is to ensure services are present so as to avoid problems. Furthermore, any system which relies on staff to contact civil rights officers presumes that staff know who the civil rights officers are. OCR's interviews with FDCF staff demonstrate that staff do not know who the ADA/504 Coordinators are. (See discussion above in Section 2 of this letter.)

OCR analyzed the Auxiliary Aids Plans for NFETC and FSH that were referenced in FDCF's response. OCR also analyzed the state policy CFOP 60-10. These plans include vague monitoring requirements but no procedures which outline how the monitoring will take place and how often. The District 2/FSH Plan states simply "The Panhandle Zone Civil Rights Investigator will monitor to ensure district wide compliance with this plan." The CFOP 60-10 policy states, "Each Coordinator or designee shall monitor the services provided to clients, family member and/or service providers who are deaf or hard of hearing on a regular basis." These policies basically repeat the requirements of the 2002 LOF and Resolution Agreement without providing specifics about how the monitoring will occur, when it will occur, who or what will be monitored, what will be documented and what will be done if a problem is detected. Notably, these policies also fail to specify that the monitoring will ensure the provision of services on a 24-hour basis as required by Paragraph "C" of the 2002 LOF and Section III(D) of the Resolution Agreement.

NFETC's Plan is slightly more specific and states that monitoring is done through "annual updates, facility surveys, validation reviews, complaint investigations and other related civil rights compliance activities." However, the ADA/504 Coordinator for NFETC stated, "I don't know of any way [F]DCF has monitored compliance with [the CFOP 60-10] policy or provision of services to the hearing impaired." The ADA/504 Coordinator also stated that even though the Auxiliary Aids Plan states that monitoring would be done through facility surveys and validation reviews, he had not been involved in any such monitoring effort.

Interviews with FDCF staff also indicate that no monitoring is occurring to ensure provision of services to the hearing impaired. Staff consistently said they were not

aware of any monitoring that had occurred at their facilities. When FDCF staff did say they were aware of a monitoring activity, it appeared the activity was done perfunctorily. FDCF's Civil Rights Coordinator said that all institutions had to send in their Auxiliary Aids Plans to FDCF Civil Rights for review. However, FDCF does not correct the plans that contradict the CFOP 60-10 policy. Thus, the ADA/504 Coordinator for NFETC said he is required to turn in an Auxiliary Aids Plan annually, but that he never receives a comment on the plan. The NFETC Plan, however, contradicts CFOP 60-10 by, for example, specifying that interpreters be "qualified" but not certified and allowing for "alternatives" to an interpreter when advance notice for an interpreter is not given. Failure to correct or comment on such inconsistencies suggests that FDCF monitoring is not functioning.

Based on the foregoing, OCR finds that FDCF has not established procedures to monitor its services to clients, family member and/or service providers who are deaf or hearing impaired. Thus, FDCF has failed to comply with Paragraph "C" of the 2002 LOF and Section III(D) of the 2000 Resolution Agreement, and failed to correct deficiencies in its compliance with Sections III(D) of the Resolution Agreement as required by Paragraph "C" of the 2002 LOF.

4. FDCF failed to train staff on policies and procedures and thus failed to comply with Paragraph "D" of the 2002 LOF or Section III(E) of the Resolution Agreement.

Paragraph "D" of the 2002 LOF directed FDCF to correct FDCF's failure to comply with Section III(E) of the Resolution Agreement. Paragraph "D" of the 2002 LOF required FDCF to take steps to ensure that staff is familiar with policies/procedures adopted and implemented to ensure the provision of qualified sign language interpreters for hearing impaired individuals. Section III(E) of the 2000 Resolution Agreement required that FDCF "staff will be knowledgeable" regarding these policies/procedures. As FDCF said that CFOP 60-10 and the Auxiliary Aids Plans constitute its policies/procedures (see discussion in Section 1), compliance with Paragraph "D" and Section III(E) would require training FDCF staff on CFOP 60-10 and the local Auxiliary Aids Plan.

In response to OCR's inquiries about this requirement, FDCF referred OCR to general online Civil Rights training and an annual training that discusses Section 504, but neither training familiarizes staff with CFOP 60-10 or local Auxiliary Aids Plans. FDCF's Civil Rights Coordinator admitted that FDCF did not require that staff be trained on CFOP 60-10. She stated that the policy was given to District ADA/504 Coordinators but she did not "know if training has been conducted."

Interviews with other staff also support the finding that FDCF failed to train on its sign language interpreter policies. Except for the ADA/504 Coordinator, none of the staff at NFETC were familiar with the NFETC Auxiliary Aids Plan or CFOP 60-10.

Although the ADA/504 Coordinator was familiar with both policies, he had never been trained on them nor could he recall any training at NFETC on either policy. While FSH had trained staff on the District II Auxiliary Aids Plan, staff were not aware of the CFOP 60-10 nor could any staff recall a training on that policy.

Based on FDCF's response to our data requests and interviews with staff, OCR finds that FDCF has not complied with Paragraph "D" of the 2002 LOF or Section III(E) of the 2000 Resolution Agreement. OCR therefore finds that FDCF has failed to correct deficiencies in its compliance with Sections III(E) of the Resolution Agreement as required by Paragraph "D" of the 2002 LOF.

5. FDCF failed to ensure that certified interpreters are provided to the hearing impaired and thus failed to comply with Paragraph "E" of the 2002 LOF or Section III(F) of the Resolution Agreement.

Paragraph "E" of the 2002 LOF directed FDCF to correct FDCF's failure to comply with Section III(F) of the Resolution Agreement. Paragraph "E" and Section III(F) required FDCF to ensure that interpreters certified by a Deaf Interpreter Assessment Program or the National Registry of Interpreters, and not family members, are provided to the hearing impaired.

In response to OCR's data requests concerning these provisions, FDCF's first response claimed that one interpreter at FSH was certified and admitted that other staff are not certified but interpret. FDCF's second response pointed to the certification requirements in CFOP 60-10 and noted that it had been distributed to zones and districts. As noted previously, CFOP 60-10 was not finalized until February 1, 2005 and, as discussed in Section 1 of this letter, CFOP 60-10 has yet to be adequately implemented.

While CFOP 60-10 requires that interpreters be certified through the Florida Registry of Interpreters for the Deaf (FRID) Quality Assurance Screening Program, the policy also allows "an official designated by the regional director/district administrator/institution superintendent" to approve a non-certified interpreter "on an individual basis." While allowing *qualified* persons without certification to interpret could be beneficial, the policy is written so vaguely that unqualified persons could apparently receive permission to interpret. Moreover, the policy does not specify adequately who can approve non-certified interpreters, on what basis, for how long and whether the facility must take efforts to certify such persons.

OCR's investigation found that the CFOP 60-10 certification standards were either misunderstood or ignored. FDCF's Civil Rights Coordinator did not know of any process used to approve non-certified interpreters nor whether a facility approving a non-certified interpreter would contact her office, the zone ADA/504 Coordinator or

anyone from FDCF. FDCF's Civil Rights Coordinator did note that neither FSH nor NFETC had contacted FDCF to obtain permission not to use a certified interpreter. OCR's investigation found that both facilities were using non-certified interpreters.

In fact, FSH's primary interpreter who was apparently referenced in FDCF's first data response as the certified interpreter, is not certified. Moreover, this person stated that she would like to become certified and had requested that FSH assist her in becoming certified by paying for the costs associated with certification. FSH refused this request and, when FSH recently posted a job announcement for an additional interpreter, the announcement did not require certification. FSH's ADA/504 Coordinator admitted that FSH knew of the certification requirements in CFOP 60-10 but had decided not to comply with those requirements. FSH's ADA/504 Coordinator said that it was too difficult to find certified interpreters and she also noted that the District II Auxiliary Aids Plan did not require certified interpreters. As noted in the discussion of monitoring in Section 3 of this letter, FDCF apparently requires that Auxiliary Aid Plans be sent to the Civil Rights office annually for review, but FDCF never commented on the District II and NFETC Plans' lack of certification requirements.

Interviews with staff indicated additional failures to ensure that interpreters are certified. At FSH, where the facility employs two full-time interpreters for the hearing impaired, staff admitted to using other staff to interpret who had some familiarity with American Sign Language. In an institution as large as FSH and with a high demand for the full-time interpreters, staff suggested that it was quicker to use nearby staff to interpret. Unfortunately, staff did not understand how qualified these other staff were to interpret nor were there any guidelines to establish what types of communication they could appropriately interpret for. Interviews with NFETC staff revealed a similar problem. NFETC usually used an apparently qualified staff person to interpret but, because she was not certified, they used a certified interpreter from a nearby university during some team meetings and competency determinations. Finally, several staff admitted in their interviews that they would allow a family member to interpret, rather than a certified interpreter.

Based on the foregoing, OCR finds that FDCF has yet to comply with Paragraph "E" of the 2002 LOF or Section III(F) of the 2000 Resolution Agreement. OCR therefore finds that FDCF has failed to correct deficiencies in its compliance with Section III(F) of the Resolution Agreement as required by Paragraph "E" of the 2002 LOF.

6. The auxiliary aids policies which FDCF uses fail to specify the steps to be implemented during the provision of auxiliary aids as required by Paragraph "F" of the 2002 LOF and Section III(G) of the Resolution Agreement.

Paragraph "F" of the 2002 LOF directed FDCF to correct FDCF's failure to comply with Section III(G) of the Resolution Agreement. Paragraph "F" and Section III(G)

required FDCF to develop a policy/procedure specifying the steps to be implemented during the provision of auxiliary aids to the hearing impaired. Any such policy/procedure was required to include, but not be limited to, six specific provisions.

In response to OCR's first data request concerning this requirement, FDCF referred OCR to the District II and NFETC Auxiliary Aids Plans. In OCR's second data request, we asked FDCF to explain whether and when FDCF developed a statewide policy/procedure. FDCF's second response referred OCR to CFOP 60-10, which was not formally released until February 1, 2005.

CFOP 60-10 does not include the third requirement under Paragraph "F" and Section III(G) which requires that the policy/procedure inform the client, if a follow-up visit is warranted, that the appointment will be scheduled with the services of an interpreter. CFOP 60-10 also does not include one element of the sixth requirement under Paragraph "F" and Section III(G), that notice be given to the client confirming that an interpreter has been arranged for an upcoming appointment. CFOP 60-10, however, otherwise meets the requirements of Paragraph "F" and Section III(G).

Unfortunately, as noted in our discussion in Section 1 of this letter, FDCF failed to implement CFOP 60-10 and FDCF staff does not know of or use the CFOP 60-10. Instead, FDCF staff use the local Auxiliary Aids Plans to determine what steps to follow during the provision of auxiliary aids to the hearing impaired. Thus, rather than analyzing CFOP 60-10, OCR must determine FDCF's compliance with Paragraph "F" and Section III(G) by analyzing the NFETC Auxiliary Aids Plan and the District II Auxiliary Aids Plan used by FSH. In the following subsections, we will note the deficiencies in each local plan under the specific provisions within Paragraph "F" and Section III(G).

- i. Staff shall be required to determine, prior to a deaf client's receipt of services, the method of communicating that the client feels most comfortable with, e.g., written communications, flash cards, or a sign language interpreter.*

Both the NFETC and FSH Auxiliary Aids Plans require an assessment in consultation with the client, but neither states explicitly that the assessment should be conducted prior to receipt of services. Neither Plan details how the client preference should be obtained nor whether the preference should be documented. Interviews with staff revealed that more structure and training is required because they did not know where to find a previous client preference nor what constituted a client preference. One staff person claimed that a client preferred writing notes because the client always wrote notes with her. Apparently, unless a client protested the

denial of an interpreter, this staff person felt the client preferred this mode of communication.

- ii. *If the services of an interpreter are selected, FDCF shall contact a sign language interpreter immediately where warranted such as in cases involving emergency child removal, and in other cases, obtain the services of an interpreter prior to the client scheduled office or home visits. The contact staff, i.e., intake worker, caseworker(s) providing service to hearing impaired clients will immediately notify the designated office or person of the need for an interpreter during these visits.*

Neither the NFETC nor the FSH Auxiliary Aids Plan requires the immediate procurement of an interpreter in emergency situations. In fact, both plans make allowances that allow for possible denial of a needed interpreter if the agency lacks sufficient notification. The NFETC Plan requires that interpreters be made available within two days of request and allows for “communication alternatives” when advance notice is not given. The FSH Plan could be interpreted to allow staff who are “reasonably skilled in basic sign language and finger spelling” to interpret when qualified interpreters are not “readily available.”

The FSH Plan is also not interpreted to require the provision of an interpreter when selected as the preferred method of communication by the client. The ADA/504 Coordinator for FSH stated, “It’s not laid out [in the Plan] when we need to honor the preferred method of communication.” This interpretation is supported by the language of the Plan that states the client’s preference “should be taken into consideration” but not necessarily followed.

Interviews with staff at both FSH and NFETC revealed that they often do not have sign language interpreters available at the first encounter with new deaf patients because they might not be informed that the new patient will be deaf or the patient might arrive at a time when no interpreters are available.

- iii. *In the event a client with a hearing impairment informs FDCF of his/her need for an interpreter, and if a follow-up visit is warranted, FDCF shall inform the client that an appointment will be scheduled with the services of an interpreter.*

As noted previously, the CFOP 60-10 does not comply with the requirements of this provision. The policy does not clearly require that follow-up visits or appointments will be scheduled with an interpreter. It

merely states that the designated office or person will be notified of the need for an interpreter during “these visits.” The policy does not require that the client be notified that any follow-up visit will be scheduled with an interpreter.

Neither the NFETC nor the FSH Plan requires that notice be provided to the client nor does either specify when staff should obtain an interpreter for follow-up appointments. The NFETC Plan states that, “Client files will be documented to indicate if an auxiliary aid or interpreter is needed and staff will arrange to have the auxiliary aid or interpreter available.” This could be interpreted to only apply to the initial appointment. The FSH Plan is silent on both of these requirements.

- iv. *After scheduling an appointment for an individual who is deaf/hearing impaired, FDCF will contact an interpreter from its list of interpreters available during normal operating hours as well as on a twenty-four (24) hour emergency child protective services basis.*

Neither the FSH nor the NFETC Plan requires that services be available on a twenty-four hour basis. This is more troubling for the FSH Plan since it is also the District II Plan and presumably covers FDCF staff involved in child protective services. The FSH Plan simply states, “Auxiliary aids shall be provided in a timeframe that will not unreasonably delay, impede or deny services to clients/applicants.”

- v. *FDCF shall inform the interpreter of the appointment date/time and provide the interpreter with confirmation of the date/time the service shall be performed. The confirmation notice will state that in the event the interpreter cannot keep the scheduled appointment, FDCF will be given sufficient time to obtain the services of another qualified sign language interpreter.*

Neither the FSH nor the NFETC policy discusses these notice requirements.

- vi. *FDCF shall also provide confirmation to the client advising that arrangements have been made for interpreter services on the date of the client's scheduled appointment. If, after interpreter services are scheduled and the interpreter is unable to keep the scheduled appointment, FDCF shall secure the services of another interpreter. If the services cannot be provided at the scheduled appointment, the client will be given the following options: (a) bringing an interpreter of the client's choice to the appointment at FDCF's reasonable expense, (b) using another method of*

communication during the scheduled appointment, or (c) re-scheduling the appointment with an interpreter secured by FDCF.

CFOP 60-10 does not require notice be given to the client confirming that an interpreter has been arranged for an upcoming appointment, but the policy does require the other of the above provisions. Neither the FSH nor the NFETC Plan require notice to the client nor do they discuss what options should be given to the client if an interpreter cannot be provided at a scheduled appointment. The ADA/504 Coordinator for FSH confirmed that staff at FSH are not aware of these requirements and are not giving clients the options specified in this provision.

Based on the failure to properly implement CFOP 60-10 and the deficiencies within the local Auxiliary Aids Plans, OCR finds that FDCF has not complied with all six of the requirements of Paragraph "F" of the 2002 LOF and all six of the requirements in Section III(G) of the 2000 Resolution Agreement. OCR therefore finds that FDCF has failed to correct deficiencies in its compliance with Sections III(G) of the Resolution Agreement as required by Paragraph "F" of the 2002 LOF.

7. FDCF failed to advise staff and others of its policy and thus failed to comply with Paragraph "H" of the 2002 LOF or Section III(H) of the Resolution Agreement.

Paragraph "H" of the 2002 LOF and Section III(H) of the Resolution Agreement required FDCF to advise all caseworkers/contact staff and its deaf clients as well as organizations representing the interests of individuals with hearing impairments of its policy, and location of such policy.

In response to OCR's first data request asking whether, when and how FDCF had fulfilled this requirement, FDCF response only stated, "training sessions and staff meetings." In response to OCR's second data request, FDCF stated, "Information is provided to clients and posters are posted. Notification to organizations [is] ongoing."

In FDCF's correspondence from October 9, 2003 and January 21, 2004, FDCF included copies of the posters that it posted in all of its offices. These posters simply notify persons that deaf persons may have interpreter services provided for them at no charge. These posters do not advise persons of FDCF's policy nor do the posters inform persons of the location of FDCF's policy. Thus, these posters do not fulfill FDCF's duties under Paragraph "H" or Section III(H).

When OCR asked the Civil Rights Coordinator for FDCF how FDCF had advised staff of the policy, she said the policy was disseminated by being posted on the intranet. Program managers get an email saying that there is a new policy and they are required to disseminate the policies to the staff. However, during OCR's interviews at

FSH and NFETC, OCR showed a copy of FDCF's CFOP 60-10 and, besides the ADA/504 Coordinators, virtually none of the staff was familiar with the policy. This suggests that program managers did not follow through on their obligation to inform their staff of the new policy or its location and suggests that no monitoring occurred to ensure that this provision was implemented.

When asked how FDCF notified organizations representing the deaf, the Civil Rights Coordinator for FDCF said that the ADA/504 Coordinators are responsible for getting the policy out to organizations in their respective zones. However, the Civil Rights Coordinator for FDCF admitted that there has been no oversight or monitoring to ensure the information was being disseminated to organizations. Instead, the Coordinator stated, "I tell [the ADA/504 Coordinators] to do this and I expect them to do it." Evidence OCR has obtained in our investigation suggests that FDCF has not advised organizations representing the deaf of the policy or its location. In an August 2005 email from Rick Kottler, President of the Deaf and Hard of Hearing Services of the Treasure Coast, Mr. Kottler responded to OCR's inquiries about this provision. He contacted other Deaf Service Centers that are the primary service providers to deaf and hard of hearing individuals in the state of Florida, and his email suggests that neither Mr. Kottler's organization nor any other member organizations had received any correspondence from FDCF concerning this matter.

Based on FDCF's responses to our data requests and the information obtained during our investigation, OCR finds that FDCF has not complied with the requirements of Paragraph "H" of the 2002 LOF or Section III(H) of the Resolution Agreement.

8. FDCF posted information concerning interpreter services and thus complied with the requirements of Paragraph "I" of the 2002 LOF or Section III(I) of the Resolution Agreement

Paragraph "I" of the 2002 LOF and Section III(I) of the Resolution Agreement require FDCF to post conspicuous signs in the admission area, waiting room and other areas of all offices state-wide visible to individuals who are deaf advising of interpreter services. Signs shall indicate where an individual can obtain services.

As noted in the discussion in Section 7 of this letter, FDCF has sent OCR documentation that it has posted such posters in its offices. The evidence we have received suggests that FDCF has complied with this requirement of the 2002 LOF and 2000 Resolution Agreement.

9. FDCF failed to provide training to client contact staff to sensitize them to the needs of individuals who are hearing impaired and thus failed to comply with Paragraph "J" of the 2002 LOF or Section III(J) of the Resolution Agreement

Paragraph “J” of the 2002 LOF directed FDCF to correct FDCF’s failure to comply with Section III(J) of the Resolution Agreement. Both provisions require FDCF to provide/reiterate, orientation and in-service training to client contact staff to sensitize them to the special needs of individuals who are deaf/hearing impaired. However, Paragraph “J” of the 2002 LOF is more specific and includes sixteen (16) required topics that must be included in the training, such as sensitivity to deaf culture, what accessibility means for a deaf person, interpreter code of ethics, and how to identify a person who is hard of hearing.

In response to OCR’s first data request, FDCF stated that it had already submitted documentation. In OCR’s second data request, we requested the training materials used in the training or a description of the training. In response, FDCF provided OCR with a copy of a general training on the ADA and Section 504. This training has only 3-5 slides that mention auxiliary aids and nothing about sensitizing staff to the needs of individuals who are deaf/hearing impaired. OCR compared the content of this training to the sixteen topics required by the 2002 LOF and found that this training only arguably covers one of these measures.

FDCF’s response to our second data request also included a description of an online training. The description of the training states the following:

The Civil Rights training package includes essential information about your rights and responsibilities under the law. This informative and brief training package contains courses: Sexual Harassment Prevention, Equal Opportunity/Affirmative Action, Employee assistance Program, and Americans with Disabilities Act.

Because this training is described as “brief” and covers several other areas of law besides the ADA, we can surmise that this training also only generally covers the ADA and Section 504 and does not train on the sixteen specific measures related to sensitivity to deaf culture. Thus, FDCF’s response suggests it has not trained all client contact staff on the sixteen sensitivity measures required by Paragraph “J” of the 2002 LOF.

Prior correspondence from FDCF reveals that it had sought to create a more comprehensive training to comply with the requirements of Paragraph “J”. In FDCF’s letter from October 9, 2003, FDCF included a “draft” of a “proposed training packet.” This training was also labeled as a general ADA and Section 504 training, but it was approximately twice as long as the training included in the April 10, 2006 data response. The “draft” training included over fourteen slides dedicated to auxiliary aids or sensitivity issues. A comparison of the content of the “draft” training to the sixteen topics required by the 2002 LOF found that the “draft” training covered seven of the sixteen required topics. Thus, even if FDCF had trained its staff using this material, it

would not have complied with the requirements of the 2002 LOF. However, because FDCF labeled this training as a “draft” and provided OCR with the other training in response to our data request, the evidence suggests that FDCF never trained its client contact staff on the “draft” training.

OCR’s interviews with FDCF staff at NFETC and FSH support the conclusion that FDCF never provided staff with a comprehensive training on the needs of the deaf. All staff at NFETC stated that they had never received training related to the provisions of Paragraph “J.” For instance, one staff person who had worked at NFETC for five years said that she had never received any training related to working with deaf people or interpreters. Staff at FSH had received training on the District II Auxiliary Aids plan which, according to the FSH ADA/504 Coordinator, covered some of the Paragraph “J” requirements. However, the ADA/504 Coordinator confirmed that the FSH training did not cover the following requirements: how to work with an interpreter, interpreter code of ethics, and how to know when effective communication is taking place.

FDCF’s February 1, 2005 policy requires that some training occur as required by Paragraph “J”. However, as our discussion in Sections 1 and 3 of this letter demonstrate, the CFOP 60-10 policy requirements are not enforced or monitored by FDCF. Moreover, even if FDCF was conducting training as required by the new policy, it only requires that training be conducted on three of the required sixteen provisions of Paragraph J.

Based on the evidence found in our investigation discussed above, OCR finds that FDCF has not provided training to all client contact staff in the sixteen areas required by Paragraph “J” of the 2002 LOF. OCR therefore finds that FDCF has failed to correct deficiencies in its compliance with Sections III(J) of the Resolution Agreement as required by Paragraph “J” of the 2002 LOF.

10. Paragraph “K” of the 2002 LOF and Section III(K) of the Resolution Agreement required that FDCF provide to OCR a copy of all materials developed in conjunction with the 2002 LOF requirements within thirty days.

As noted earlier, OCR’s records suggest that OCR and FDCF traded correspondence and communications after the 2002 LOF. OCR assumes without finding that FDCF met with this requirement.

11. FDCF never disseminated information to advocacy organizations for the hearing impaired and thus failed to comply with Paragraph “L” of the 2002 LOF or Section III(L) of the Resolution Agreement.

Paragraph “L” of the 2002 LOF directed FDCF to correct FDCF’s failure to comply with Section III(L) of the Resolution Agreement. Paragraph “L” of the 2002 LOF and Section III(L) of the Resolution Agreement require that FDCF, for at least two years after the date of the LOF, disseminate to all advocacy organizations/groups for individuals who are deaf information regarding interpretive services rights under Title II and Section 504.

In response to OCR’s first data request about this requirement, FDCF stated that documentation had been submitted. OCR’s second data request stated that we were unaware of any such documentation and asked that it be resubmitted. FDCF’s response stated that “notification to organizations [is] ongoing.” Rick Kottler’s email, mentioned in Section 7 of this letter, suggests that the organizations he surveyed had not received any communication from FDCF about the rights of the hearing impaired at least as of August 30, 2005.

Based on FDCF’s failure to provide documentation of its compliance with these provisions, and the survey by Mr. Kottler’s organization, OCR finds that FDCF failed to comply with the requirements of Paragraph “L” of the 2002 LOF and Section III(L) of the Resolution Agreement. OCR therefore finds that FDCF has failed to correct deficiencies in its compliance with Sections III(L) of the Resolution Agreement as required by Paragraph “L” of the 2002 LOF.

12. FDCF failed to notify OCR of interpretive services complaints and thus failed to comply with Paragraph “M” of the 2002 LOF or Section III(M) of the Resolution Agreement

Paragraph “M” of the 2002 LOF directed FDCF to correct FDCF’s failure to comply with Section III(M) of the Resolution Agreement. Paragraph “M” of the 2002 LOF and Section III(M) of the Resolution Agreement required FDCF to notify OCR of all interpretive services complaints or grievances made against it alleging discrimination on the basis of disability for a period of two years.

In response to OCR’s second data request as to whether, when and how FDCF had notified OCR of interpreter services complaints or grievances from September 13, 2002 to September 13, 2004, FDCF stated that there were “no complaints received by [FDCF].”

Evidence obtained during OCR’s investigation suggests that FDCF did not adequately track interpreter service complaints or grievances to know whether it had received any such complaints. FDCF’s letter from January 21, 2004 included EEO Coordinators Performance reports that show complaints received. The format of the reports is not standardized, but none of the report formats tracks interpreter service complaints or grievances. Moreover, ten of the districts did not even track ADA or disability related

complaints. For instance, District One's quarterly report from April, May and June of 2003 only tracked Informal, Formal, Title VI, and Title VII complaints. There was no tracking of ADA or interpreter service complaints. These reports strongly suggest that FDCF did not know of any interpreter service complaints or grievances because it did not track its receipt of such complaints.

OCR's interviews with FDCF staff support a finding that FDCF never adequately tracked these complaints. The Civil Rights Coordinator for FDCF said that FDCF's Civil Rights Office is supposed to get all civil rights complaints, but the Coordinator admitted that many complaints are not forwarded to her office. She stated, "There [are] a lot of complaints that are probably not sent to us until we go out and monitor the institution." The ADA/504 Coordinator for NFETC stated that he is in charge of any complaints that pertain to the facility, but that "[F]DCF has never told me to forward certain complaints to them." The ADA/504 Coordinator for FSH also stated that she is "not aware of any requirements to forward ADA/504 complaints to DCF."

Information obtained during OCR's investigation strongly suggests that FDCF did receive interpreter services complaints or grievances after the Resolution Agreement and 2002 LOF. During her interview in the summer of 2006, the ADA/504 Coordinator for FSH recalled receiving a complaint from a person who was hearing impaired "a couple of years ago." Additionally, in an August 30, 2005 email, Rick Kottler, President of the Deaf and hard of Hearing Services of the Treasure Coast, notified OCR of a complaint he filed against FDCF with the Department of Justice. Although Mr. Kottler did not provide the time that he filed his complaint, he stated that the incident occurred in April of 2004. Mr. Kottler informed an FDCF ADA/504 Coordinator about an adult protective services investigator refusing to provide an interpreter for a deaf elderly woman who was alleging abuse. Instead of providing an interpreter as requested, the investigator used the complainant's granddaughter to interpret even though the granddaughter expressed concerns about a potential conflict of interest. Mr. Kottler said that after orally complaining to the FDCF ADA/504 Coordinator, he filed a formal complaint with the Department of Justice. However, because FDCF failed to track adequately receipt of interpretive services complaints or grievances, FDCF apparently never received these complaints nor was FDCF aware of them when responding to our data request.

Based on the aforementioned evidence, OCR therefore finds that FDCF failed to correct deficiencies in its compliance with Sections III(M) of the Resolution Agreement as required by Paragraph "M" of the 2002 LOF.

CONCLUSION

In December of 2000, OCR notified FDCF it had violated its obligations under Title II and Section 504 by failing to provide appropriate interpretive services when necessary to

ensure effective communication with persons who are deaf. FDCF agreed to remedy the violation findings and comply with the terms of the 2000 Resolution Agreement in exchange for OCR's agreement not to issue a formal Violation LOF. After an investigation, OCR notified FDCF of its noncompliance with the terms of the Resolution Agreement in the 2002 LOF. OCR required that FDCF correct the deficiencies by taking twelve corrective measures adopted from the provisions of the 2000 Resolution Agreement. At that time, OCR notified FDCF that if it failed to correct the deficiencies in a timely manner OCR could issue a Violation LOF and notify the Assistant Attorney General of the violation findings.

As a result of OCR's most recent investigation, OCR finds that, seven years after agreeing to take these measures and five years after receiving notice of its failures to do so, FDCF still has failed to implement the following provisions of the 2000 Resolution Agreement: Sections III(D), III(E), III(F), III(G)(i)-(vi), III(H), III(L), and III(M). In addition, OCR finds that FDCF has failed to implement the following ten corrective measures which the 2002 LOF found were needed to remedy deficiencies in FDCF's compliance with the Resolution Agreement: Paragraphs "A," "B," "C," "D," "E," "F"(i)-(vi), "H," "J," "L" and "M". Seven years after OCR found FDCF in violation of Title II and Section 504, FDCF has taken very few steps to bring itself into voluntary compliance. Besides putting up posters in its offices, FDCF has simply issued a policy that directs staff to implement the remedial provisions, but FDCF has taken no action to ensure the provisions are implemented. FDCF has not even taken the minimum steps necessary to adequately distribute its policy or to train people on it.

This investigation has found that FDCF failed to correct the deficiencies as required by the 2002 LOF. Thus, pursuant to the cure provisions in Section II(E) of the Resolution Agreement, OCR is issuing this Violation LOF. OCR's Findings of Facts and Conclusions of Law from the 2000 LOF, attached to and incorporated by reference into this LOF, establish that FDCF violated Title II and implementing regulations at 28 C.F.R. §§ 35.130(a), (b)(1)(i)-(iii), 35.160(a)-(b), and Section 504 and implementing regulations at 45 C.F.R. §§ 84.4(a), (b)(1)(i)-(iii) and 84.52(a)(1)-(3), (d)(1)-(3). Because FDCF failed to remedy those violations, it has remained in a state of noncompliance with Title II and Section 504 for seven years.

OPPORTUNITY FOR VOLUNTARY COMPLIANCE

When an OCR investigation indicates that a recipient of HHS assistance or a public entity under Title II has failed to comply with applicable regulations, the recipient is given an opportunity to take the corrective actions necessary to remedy the violation. If compliance cannot be secured by voluntary means, it may be effected by suspension or termination of, or refusal to grant or to continue Federal financial assistance, or by any other means authorized by law, including a recommendation that the Department of Justice bring an action to enforce Section 504 and/or Title II. Under 28 CFR § 35.174, OCR is required to

refer a case to the Attorney General for appropriate action when negotiations are unsuccessful.

In this case, because FDCF has twice failed to implement measures it has promised to take, we will be forced to deem these negotiations as unsuccessful unless FDCF demonstrates its intention to fully implement all the measures of the 2000 Resolution Agreement and the 2002 LOF, which are necessary to bring FDCF into compliance with Title II and Section 504. We believe FDCF must rededicate itself to this matter to ensure it takes the necessary corrective measures. We ask that FDCF provide us with a detailed Action Plan within thirty days of receipt of this letter that will explain how FDCF will bring itself into compliance with Title II and Section 504, by what dates all actions will occur and who will be responsible for each action. To demonstrate FDCF's intention to carry out these corrective measures, the substantive terms of the Action Plan shall be redrafted into a new Resolution Agreement. As FDCF's past inaction may stem from a lack of monitoring, FDCF's Action Plan must include extensive monitoring to ensure the Plan requirements are accomplished. FDCF's Action Plan should include an outside Plan Monitor who can devote him or herself full-time to ensure that FDCF is implementing the necessary corrective action. FDCF's Action Plan should take into account our comments in this letter and should include the following:

- As mentioned in the discussion under Section 1 of this letter, FDCF must ensure staff is aware of the CFOP 60-10 and the local Auxiliary Aids Plans and must clarify how to integrate the state and local policy. For instance, FDCF could issue a memo explaining how the CFOP 60-10 and the local Auxiliary Aids Plans work in concert and monitor to ensure the above memo, the CFOP 60-10 and local Auxiliary Aids Plan are disseminated to every FDCF staff person, and that every FDCF staff person has received and read each document. Additionally, FDCF policy could be modified to require that clarifications or references to CFOP 60-10 be included in local Auxiliary Aids Plans.
- As discussed in Section 2 of this letter, FDCF must provide OCR with the names and contact information for all ADA/504 Coordinators state-wide and with documentation establishing whether the ADA/504 Coordinators are familiar with Title II and Section 504.
- As discussed in Section 2 of this letter, FDCF must ensure that all ADA/504 Coordinators formulate and implement policies, practices, and procedures as required by the 2002 LOF and the provisions of the 2000 Resolution Agreement. FDCF must detail when and how the ADA/504 Coordinators will implement the requirements of the 2000 Agreement and 2002 LOF. FDCF should include a monitoring Plan to ensure the ADA/504 Coordinators implement the requirements of the 2000 Agreement and 2002 LOF.

- As discussed in Section 2 of this letter, FDCF must ensure that all ADA/504 Coordinators are familiar with Title II and Section 504. FDCF should detail a plan for ongoing training and support of the ADA/504 Coordinators. Training should detail the general responsibilities of the Coordinators and the specific responsibilities under the 2000 Agreement and 2002 LOF.
- As discussed in Section 3 of this letter, FDCF must establish policies detailing how FDCF's Central Office and all of its ADA/504 Coordinators will monitor FDCF's services to clients, family members and/or service providers who are deaf or hearing impaired. These policies should specify how and when the monitoring will occur, who or what will be monitored, what will be documented and what will be done if a problem is detected. The policies will ensure the provision of services on a 24-hour basis. The policies should include specific requirements for annual updates, facility surveys, validation reviews, complaint investigations and other compliance activities. The policies should also require that FDCF's Central Office review local Auxiliary Aids Plans for consistency with CFOP 60-10.
- As discussed in Section 4 of this letter, FDCF must train all FDCF staff on the policies and procedures adopted to ensure the provision of sign language interpreters for hearing impaired individuals. Currently, that would require FDCF to train all staff on CFOP 60-10 and the local Auxiliary Aids Plans. FDCF should monitor to ensure all staff receive this training and are familiar with the policies and procedures.
- As discussed in Section 5 of this letter, FDCF should revise CFOP 60-10 and eliminate the loophole allowing a non-certified interpreter to interpret. Alternatively, FDCF should clarify this portion of the policy to ensure it is not abused. For instance, FDCF could grant authority to a Plan Monitor to allow qualified but non-certified interpreters to interpret in specified situations for a limited time until they can be certified.
- As noted in our discussion of Section 6 of this letter, FDCF should revise CFOP 60-10 to require that follow-up visits, if warranted, will be scheduled with an interpreter and to inform the client of this fact. FDCF either needs to monitor the local Auxiliary Aids Plans to ensure they do not contradict the CFOP policies for procuring sign language interpreters or the CFOP 60-10 policies need to be more specific so that they can be used by all staff when procuring sign language interpreters.
- As discussed in Section 7 and 11 of this letter, FDCF should create a plan to identify advocacy organizations and organizations representing the interests of individuals with hearing impairments and distribute its CFOP 60-10 and information regarding interpretive services rights to those organizations.

- As discussed in Section 9 of this letter, FDCF should create a plan to create and implement statewide training on the special needs of individuals who are deaf/hearing impaired.
- As discussed in Section 12 of this letter, FDCF should create a plan to track and notify OCR of all interpretive services complaints or grievances. This plan should include ongoing monitoring of all FDCF institutions and offices to ensure they understand this responsibility and inform FDCF of all such complaints or grievances.

FDCF's Action Plan must detail how every action required by the Plan shall be monitored and how completion of each action will be documented. Monitoring duties should entail, at least for one year, monthly progress reports on all required actions as well as compliance reports of monitoring activities. Monitoring activities should include facility surveys, validation reviews, and the collection and analysis of documentation from all ADA/504 Coordinators, all FDCF offices and institutions to ensure their compliance with their requirements under the Plan.

OCR is interested in working with FDCF to resolve this matter in a cooperative manner, and in providing FDCF with technical assistance to ensure that FDCF provides necessary auxiliary aids or qualified sign language interpreters for effective communication with persons who are deaf or hearing impaired. To this end, we propose that OCR meet with representatives of FDCF within one month to discuss necessary corrective actions and specific strategies to ensure that corrective actions are carried out. However, if FDCF does not agree to take the required corrective actions, we may take action consistent with our responsibility under the Title II regulations which require us to refer matters to the Department of Justice when negotiations are unsuccessful.

* * *

We are obliged to inform you that no one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because he or she has either taken action or participated in an action to secure rights protected by the ADA.

Under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, we may be required to release this letter as well as other correspondence and records related to the complaint in response to a request from a third party. Should we receive such a request, we will safeguard, to the extent permitted by FOIA, the release of information that constitutes an unwarranted invasion of privacy. This letter is not intended, and should not be construed, to cover any other issues regarding compliance with Title II or Section 504 which may exist and which are not discussed specifically herein.

We appreciate your cooperation in this matter. Please reference the OCR docket number (05-36562) in any correspondence that you send to this office. If you have questions or concerns, feel free to contact the investigator on this case, Gail Hoffman, by phone at (404) 562-4758, or OCR's Regional Attorney, Chris Griffin, at (404) 562-3387.

Sincerely,

Roosevelt Freeman
Regional Manager

Cc: Assistant Attorney General
Enc: 2000 LOF