

SETTLEMENT AGREEMENT

Between the

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE FOR CIVIL RIGHTS

and

THE DISTRICT OF COLUMBIA
CHILDREN AND FAMILY SERVICES AGENCY

DATE:

Transaction Number: 07-66017

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I. Introduction

This Settlement Agreement (Agreement) is entered into by the United States Department of Health and Human Services (HHS), Office for Civil Rights (OCR) and the District of Columbia (the District)¹. This agreement resolves OCR transaction number 07-66017 regarding the provision of auxiliary aids by the District's Child and Family Services Agency (CFSA), including qualified sign language interpreters, to provide persons who are deaf or hard of hearing with an equal opportunity to benefit from services.

OCR initiated an investigation to determine whether CFSA provides appropriate auxiliary aids to deaf or hard of hearing Clients after receiving a complaint on April 9, 2007, alleging that CFSA failed to provide a sign language interpreter for a deaf Client and his family members throughout most of CFSA's interactions with the family during the course of an adoption proceeding. OCR concluded that CFSA failed to take appropriate steps to ensure effective communication with the deaf Client, depriving him of an equal opportunity to benefit from the services it provides. OCR therefore concluded that CFSA discriminated against the Client on the basis of his disability in violation of Section 504 and Title II of the ADA. The District, however, denies all liability and factual characterizations of claims alleged in OCR transaction number 07-66017.

CFSA is the designated child welfare agency for the District of Columbia. It provides child welfare services, including adoptive and foster care services and child protective services to individuals under the age of 18 and their families. CFSA has over 50 employees.

A. Parties to the Agreement

1. United States Department of Health and Human Services, Office for Civil Rights and
2. District of Columbia.

B. Jurisdiction

Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794 (Section 504), and its implementing regulation at 45 C.F.R. Part 84 prohibit discrimination on the basis of disability in any program or activity receiving Federal financial assistance. Part 84 prohibits such discrimination in programs and activities

¹ This Agreement is between OCR and the District of Columbia as it relates to the actions of CFSA. OCR's findings of noncompliance or compliance apply only to CFSA and not to other District agencies.

receiving financial assistance from HHS. CFSA receives Federal financial assistance through Social Services Block Grants and is subject to Section 504 and its implementing regulation.

Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §12131-12134 (the ADA), and its implementing regulation at 28 C.F.R. Part 35 prohibit discrimination on the basis of disability by certain public entities. CFSA is a local government social service agency and is subject to Title II of the ADA and its implementing regulation.

C. Purpose of Agreement

The purpose of this Agreement is to ensure CFSA's compliance with Section 504 and Title II of the ADA and their implementing regulations. The District agrees to the terms of this Agreement and to compliance with the applicable provisions of Section 504 and Title II of the ADA and implementing regulations. The promises, obligations or other terms and conditions set forth in this Agreement constitute the exchange of valuable consideration between the District and OCR.

The actions described in this Agreement fully address the issues raised in Transaction Number 07-66017 (the complaint). It is understood and agreed by OCR that completion of these actions will ensure that CFSA is in compliance with Section 504 and Title II of the ADA as they pertain to the issues specifically addressed during OCR's investigation of the complaint. The Agreement shall not be deemed or construed to be an admission or evidence of any violation of any law or regulation or of any liability or wrongdoing on the part of the District of Columbia or its current and former employees, officials, agents, and/or contractors.

D. Background

The events precipitating OCR's investigation occurred prior to 2007, and CFSA policies and practices with respect to the provision of auxiliary aids and services have changed substantially since that time. After the complaint was filed with OCR, CFSA made changes to its policies and procedures, appointed a Section 504/ADA coordinator, and provided training to staff to ensure future compliance and to provide effective communication for CFSA clients who are deaf or hard of hearing.

Specifically, CFSA implemented the "Services for the Deaf and Hard of Hearing" policy and revised its "Language Access Services" policy to specifically include the provision of auxiliary aids and services to people who are deaf or hard of hearing and sets forth CFSA's procedure for obtaining a sign language interpreter.

CFSA also appointed an ADA/Section 504 Coordinator who has worked with the District's Office of Disability Rights to provide training to CFSA staff regarding the provision of auxiliary aids and services.

A notice form was developed and displayed within the agency notifying CFSA clients of the ADA Coordinator, and that auxiliary aids and services will be provided free of charge when necessary for CFSA to provide effective communication.

In addition, after the events precipitating OCR's investigation, a new agency within the District, the Office of Disability Rights, was created. This agency is responsible for coordinating compliance efforts with various Federal and District non-discrimination regulations, providing staff training and technical assistance, and working with District clients and employees to help meet the needs of people with disabilities. ODR provides interpreting services, training, advocacy, and other services related to effective communication. For interpreting services, an agency staff member fills out a request and sends it to ODR (clients may also make requests directly to ODR). ODR then contacts the staff member to determine the type and nature of the communication, and contacts the client to determine the client's communication needs and preferences. ODR then contacts a local interpreting agency to provide a qualified interpreter. After the interpreting session, ODR follows up with the client to determine their satisfaction with the interpreting services.

II. Definitions

For the purposes of this Agreement, the terms listed below have the following meaning:

A. Appropriate Auxiliary Aids and Services include a wide variety of equipment, materials, and services that may be used to provide effective communication for people who are deaf or hard of hearing:

Auxiliary aids and services may include, but are not limited to: qualified oral/sign language interpreters, written notes, qualified note takers, real-time transcription services, video text displays, amplified and hearing aid-compatible telephones, assistive listening systems, open or closed captioning and caption decoders, and text telephones or Telecommunication Devices for the Deaf (TDDs).

B. Client is broadly construed to include any individual who is seeking or receiving services from CFSA.

C. Companion means a person who is one of the following: (a) a person whom the Client indicates should communicate, or circumstances otherwise indicate should communicate, with CFSA Staff about the Client, the Client's needs or history, or child welfare services for the Client; (b) a person who is authorized to help the Client act on the information, advice, or instructions provided by CFSA Staff; or (c) such other person with whom CFSA Staff would ordinarily and regularly communicate regarding the provision of CFSA services.

D. CFSA Staff means all employees and independent contractors with contracts to work for CFSA in the provision of child social services, including CFSA supervisory staff, social workers, and any individuals who have or are likely to have direct contact with Clients and/or Companions.

E. Emergency Removal Situation means a situation where a child is taken into custody by the District for the safety or welfare of that child.

F. Qualified Interpreter means an individual who is able to interpret competently, accurately, and impartially, both receptively and expressively, using any specialized vocabulary necessary for effective communication to a Client and/or Companion who is deaf or hard of hearing.

A sign language interpreter must be able to sign to the individual who is deaf or hard of hearing what is being said by the hearing person, and to voice to the hearing person what is being signed by the individual who is deaf or hard of hearing. Because a qualified interpreter or reader must be able to interpret impartially, a family member or friend of the individual who requires a communication-related auxiliary aid or service may not be qualified to render the necessary auxiliary aid or service because of factors such as professional or personal involvement. Additionally, although an interpreter may be certified, a certified interpreter is not necessarily "qualified." Similarly, certification is not required in order for an interpreter to be "qualified²."

A "qualified interpreter" may include a "relay interpreter" who has specific skill and training in acting as an intermediary between a Client and/or Companion and a sign language interpreter in instances when the interpreter cannot otherwise independently understand the Client's and/or Companion's primary mode of communication.

² Not all interpreters are qualified for all situations. For example, an interpreter who is qualified to interpret using American Sign Language is not necessarily qualified to interpret orally. Someone who has only a rudimentary familiarity with sign language or finger spelling is not a "qualified interpreter." Also, someone who is fluent in sign language but who does not possess the ability to process spoken communication into the proper signs or to observe someone signing and translate his or her signed or finger-spelled communications into spoken words is not a qualified interpreter.

Types of Qualified Interpreters:

1. Qualified interpreters on the CFSA staff;
2. Qualified interpreters who are independent contractors or employees of agencies, non-profit organizations, or community organizations;
3. Qualified interpreters who work through volunteer programs; and
4. Qualified interpreters who provide services remotely through a video interpreting services provider (services that use video conference technology over high-speed internet wires) (VIS), provided that such VIS interpreter is able to interpret competently, accurately, impartially and effectively, both receptively and expressively, using any specialized terminology necessary for effective communication with a deaf or hard of hearing Client and/or Companion.

G. Qualified Note Taker means a note taker who is able to transcribe voice communications competently, accurately, and impartially, using any specialized terminology necessary to effectively communicate in a social services setting with a Client and/or a Companion who has a hearing, vision or speech impairment.

Types of Qualified Note Takers:

1. Qualified Note Takers on the CFSA staff;
2. Qualified Note Takers who are independent contractors or employees of agencies, non-profit organizations, or community organizations; and
3. Qualified Note Takers who work through volunteer programs.

H. "TTY" (teletypewriter) and "TDD" (telecommunications device for deaf persons) shall mean devices that are used with a telephone to communicate with persons who are deaf or hard of hearing by typing and reading communications.

III. General Provisions

A. Facilities Covered by Agreement.

This Agreement covers the CFSA and all its subsidiary departments and programs.

B. Suspension of Administrative Actions.

Subject to the continued performance by CFSA of the stated obligations and required actions contained in the Agreement and in conformity with Section III.H, an agreement to comply with the terms of this Agreement, OCR shall suspend administrative actions on OCR Transaction Number 07-66017.

C. Effective Date and Term of the Agreement.

This Agreement shall become effective as of the date that both Parties have signed it (the Effective Date). This Agreement shall remain in effect for three hundred sixty five (365) days following the Effective Date of this Agreement (the Term). OCR shall determine, by the last day of the Term, whether DC CFSA is in compliance with the Agreement. Absent such a determination by OCR, the Agreement shall terminate at close of business on the last day of the Term. If OCR determines that CFSA is in compliance with the Agreement, the Agreement shall terminate. Notwithstanding the Term of this Agreement, CFSA acknowledges that it shall comply with Section 504 for so long as it continues to receive Federal financial assistance. CFSA acknowledges that it also will comply with Title II of the ADA for so long as it continues to be a local government social services agency. All provisions are effective immediately unless otherwise specified in this Agreement.

D. CFSA's Continuing Obligations.

Nothing in this Agreement is intended to relieve CFSA of its continuing obligation to comply with other applicable non-discrimination statutes and their implementing regulations, including Section 504 and its implementing regulation at 45 C.F.R. Part 84 and Title II of the ADA and its implementing regulation at 28 C.F.R. Part 35.

E. Effect on Other Compliance Matters.

The terms of this Agreement do not apply to any other issues, investigations, reviews, or complaints of discrimination that are unrelated to the subject matter of this Agreement and that may be pending before OCR or any other Federal agency. Any unrelated compliance matters arising from subsequent reviews or investigations shall be addressed and resolved separately. This Agreement also does not preclude further OCR compliance reviews or complaint investigations. OCR shall review complaints against CFSA that are received after the Effective Date of this Agreement. Nothing in this paragraph shall be construed to limit or restrict OCR's statutory and regulatory authority to conduct compliance reviews or complaint investigations.

F. Prohibition Against Retaliation and Intimidation.

CFSA shall not retaliate, intimidate, threaten, coerce, or discriminate against any person who has filed a complaint or assisted or participated in any manner in the investigation of matters addressed in this Agreement.

G. OCR's Review of CFSA's Compliance with Agreement.

OCR may, at any time, review CFSA's compliance with this Agreement. As part of such review, OCR may interview witnesses, examine and copy documents, and require CFSA to provide written reports and permit inspection of CFSA facilities. Under the Freedom of Information Act and upon request by the public, OCR may be required to release certain information it obtains in the course of reviewing CFSA's compliance with this Agreement. In the event OCR receives such a request, OCR will make every effort to protect information and agrees to assert all applicable exemptions from disclosure permitted by law.

Throughout the Term of this Agreement, CFSA agrees to retain records required by OCR to assess CFSA's compliance with the Agreement and to submit the requested reports to OCR. OCR will provide written notice at least ten (10) business days prior to any onsite inspection pursuant to this Agreement.

For all purposes related to the enforcement and/or monitoring of this Agreement, the contact person shall be the ADA coordinator or the Director of Human Resources of CFSA. If a new individual is assigned to one of these positions and designated by CFSA as the contact person, CFSA shall promptly notify OCR.

H. Compliance with the Terms of Agreement.

In consideration of CFSA's full implementation of the provisions of this Agreement, OCR agrees not to initiate enforcement proceedings with respect to the violations identified in Transaction Number 07-66017. During the duration of this Agreement, if at any time OCR determines that CFSA has failed to comply with any provision of this Agreement, OCR shall notify CFSA in writing.

The notice shall include a statement of the basis for OCR's determination and shall allow CFSA fifteen (15) business days to either explain in writing the reasons for its actions and describe the remedial actions that have been or shall be taken to achieve compliance with this Agreement or provide information that would cause OCR to review or change its determination. On notice to CFSA, OCR may shorten the 15-day period if it determines that a delay would result in irreparable injury to the complainant or to other affected parties.

If CFSA does not respond to the notice, or if, upon review of CFSA's response, OCR determines that CFSA has not complied with the terms of the Agreement, OCR may, upon thirty (30) business days notice to CFSA, take appropriate measures to effectuate CFSA's compliance with Section 504 and Title II of the ADA, which may include administrative proceedings to suspend, terminate, or

refuse to grant or continue Federal financial assistance and/or referral of the matter to the U.S. Department of Justice.

I. Non-Waiver Provision.

Failure by OCR to enforce this entire Agreement or any provision thereof with respect to any deadline or any other provision shall not be construed as a waiver of OCR's right to enforce other deadlines or provisions of this Agreement.

J. Entire Agreement.

This Agreement constitutes the entire understanding between CFSA and OCR in resolution of OCR Transaction Number 07-66017. Any statement, promise, or agreement not contained herein shall not be enforceable through this Agreement.

K. Modification of Agreement.

This Agreement may be modified by mutual agreement of the parties in writing.

L. Severability.

In the event that a court of competent jurisdiction determines that any provision of the Agreement is unenforceable, such provision shall be severed from this Agreement and all other such provisions shall remain valid and enforceable; provided, however, that if the severance of any such provision materially alters the rights or obligations of the parties, they shall, through reasonable, good faith negotiation, agree upon such other amendments hereto as may be necessary to restore the Parties as closely as possible to the relative rights and obligations initially intended by them hereunder.

M. Publication or Release of Agreement.

OCR places no restrictions on the publication of the terms of this Agreement. In addition, OCR may be required to release this Agreement and all related materials to any person upon request consistent with the requirements of the Freedom of Information Act, 5 U.S.C. §552, and its implementing regulations at 45 C.F.R. Part 5.

N. Authority of Signer.

The individual who signs this document on behalf the District and its agency, CFSA, represents that he or she is authorized to bind the District to this Agreement.

O. Third Party Rights.

This Agreement can only be enforced by the parties specified in this Agreement, their legal representatives. This Agreement shall be unenforceable by third parties and shall not be construed to create third party beneficiary rights.

P. Technical Assistance.

OCR agrees to provide appropriate technical assistance to CFSA regarding compliance with this Agreement, as requested and as reasonably necessary.

Q. Use as Precedent

This Agreement is not precedent and will not be cited as such by either Party in any subsequent judicial proceedings.

IV. General Obligations

A. Disability Non-Discrimination.

CFSA shall provide Clients and/or Companions with hearing impairments with the full and equal enjoyment of the services, privileges, facilities, advantages, and benefits of CFSA as required by Section 504 and Title II of the ADA.

B. Non-Discrimination by Association.

CFSA shall not deny equal services, accommodations, or other opportunities to any individual because of the known relationship of the individual with a person with disability.

C. Section 504/ADA Coordinator.

CFSA shall designate an individual responsible for coordination of its efforts to comply with Section 504 and Title II of the ADA. The Section 504/ADA Coordinator shall be available to answer questions and provide appropriate assistance to CFSA Staff and the public regarding immediate access to, and proper use of, the appropriate auxiliary aids and services required by this Agreement. The Section 504/ADA Coordinator shall oversee and ensure the quality of the auxiliary aids and services that CFSA provides. The Section 504/ADA Coordinator shall know where the appropriate auxiliary aids are stored and how to operate them, and shall be responsible for their maintenance, repair, replacement, and distribution. CFSA shall circulate broadly within all CFSA the name, telephone number, functions, and office

location of the Section 504/ADA Coordinator, including a TTY/TDD telephone number that may be called by Clients and/or Companions who are deaf or hard of hearing in order to obtain the assistance of the Section 504/ADA Coordinator. In lieu of a dedicated TTY/TDD telephone number, however, Clients and/or Companions may utilize the 711 service to contact CFSA.

D. Section 504/ADA Grievance Procedure.

CFSA developed a grievance procedure for addressing complaints of disability discrimination, including complaints regarding the failure to provide appropriate auxiliary aids and services. OCR reviewed the grievance procedure to ensure that it properly incorporates due process standards and provides for the prompt and equitable resolution of complaints alleging any actions prohibited under Section 504 or Title II of the ADA. (See Attachment A, CFSA Grievance Procedure).

The grievance procedure was disseminated to CFSA staff.

E. Notice of Nondiscrimination under Section 504 and the ADA.

CFSA adopted a Notice of Nondiscrimination under Section 504 and the ADA. The notice provides: (1) that CFSA does not discriminate on the basis of disability and that appropriate auxiliary aids and services shall be provided free of charge to Clients and/or Companions who are deaf or hard of hearing; (2) the process for filing and resolving grievances about disability discrimination, including complaints regarding the failure to provide auxiliary aids and services to those who are deaf or hard of hearing; and (3) the name, telephone number, and email address of the Section 504/ADA Coordinator. (See Attachment B, Notice for Persons with Disabilities).

CFSA shall take steps to notify Clients, Companions, and CFSA Staff of the information contained in the Notice of Nondiscrimination.

This information shall be communicated by:

1. Posting signs in visible locations at all CFSA's entry points;
2. Including this information in brochures and other written information about CFSA that is distributed to Clients as brochures or other written information is published;
3. Posting the information on CFSA's website; and
4. Offering additional assistance, including prominently displayed signage translated into frequently encountered languages, when limited written English proficiency may be a barrier to the Client's and/or Companion's understanding of the notice.

V. Provision of Appropriate Auxiliary Aids and Services

A. Recognition.

CFSA recognizes that Clients and/or Companions who are deaf or hard of hearing need appropriate auxiliary aids and services to access and fully participate in the social services provided by CFSA. CFSA is committed to providing appropriate auxiliary aids and services in a timely manner to such Clients and/or Companions to ensure effective communication and an equal opportunity to participate fully in the benefits, activities, and programs provided by CFSA. This includes ensuring effective communication between CFSA's officers, staff, contractors and subcontractors and Clients and/or Companions who are deaf or hard of hearing.

B. Initial Assessment.

CFSA shall consult with the Client and/or Companion who is deaf or hard of hearing wherever possible to determine which appropriate auxiliary aids are needed to ensure effective communication. While consultation is strongly encouraged, the ultimate decision as to which auxiliary aid or service to provide to ensure effective communication rests in the hands of CFSA Staff, provided that the method chosen results in effective communication. The assessment made by CFSA Staff shall take into account all relevant facts and circumstances, including without limitation, the following:

1. The nature, length, and importance of the communication at issue;
2. The individual's disability and communication skills and knowledge;
3. The Client's and/or Companion's preference or stated need for an auxiliary aid or service; and
4. The reasonably foreseeable social service activities of the Client.

In the event that communication is not effective, CFSA Staff shall reassess which appropriate auxiliary aids and services are necessary, in consultation with the person with a disability, where possible.

C. Time for Assessment.

1. Scheduled Interactions. CFSA Staff shall determine which appropriate auxiliary aids and services are necessary to ensure effective communication, and the timing, duration, and frequency with which they will be provided, at the time an appointment is scheduled or prior to the first appointment. Trained CFSA Staff shall perform and document in the Client's record a communication assessment as part of each initial meeting.

2. Non-Scheduled Interactions (all situations not covered by “Scheduled Interactions” including emergency situations). The determination of which appropriate auxiliary aids and services are necessary to ensure effective communication, and the timing, duration, and frequency with which they will be provided shall be made by CFSA Staff upon the initial interaction, whether initiated by the Client and/or Companion who is deaf or hard of hearing, or CFSA. Trained CFSA Staff shall perform and document, in the Client’s record, a communication assessment as part of the initial interaction with the Client and/or Companion who is deaf or hard of hearing. When documenting the communication assessment in situations wherein the individual interacting with CFSA is not the subject of an open case or of an ongoing investigation (e.g., a deaf or hard of hearing person calling to report potential child abuse by a third party), CFSA may choose not to record identifiable information, such as an individual’s name, and may maintain such documentation in a separate database, rather than in client records.

3. Continuation of Provision of Appropriate Auxiliary Aids and Services. After conducting an initial assessment, CFSA shall continue to provide appropriate auxiliary aids and services to the Client and/or Companion who is deaf or hard of hearing, during the entire period of service to the Client, without requiring subsequent requests for the appropriate auxiliary aids and services by the Client and/or Companion for subsequent meetings, visits, or services provided. CFSA Staff shall keep records that reflect the ongoing provision of appropriate auxiliary aids to Clients and/or Companions who have are deaf or hard of hearing, such as notations in the Client’s record.

4. Determination Not to Provide Requested Auxiliary Aid or Service. If, after conducting the assessment as described in Section V of this Agreement, CFSA decides not to provide the auxiliary aid or service requested by the Client and/or Companion who is deaf or hard of hearing, CFSA Staff shall so advise the person requesting the auxiliary aid or service and document the date and time of the decision, the name and title of the CFSA Staff who made the decision, the basis for the determination, and the alternative auxiliary aid or service, if any, that CFSA has decided to provide. A copy of this documentation shall be provided to the Client and/or Companion who is deaf or hard of hearing and retained in the Client’s record.

D. General Circumstances when Auxiliary Aids and Services Will Be Provided.

CFSA shall provide auxiliary aids and services, including, but not limited to, qualified interpreters, to Clients and/or Companions who are deaf or hard of

hearing in any situations where such provision is necessary for effective communication, including, but not limited to these situations:

1. Interviews of potential foster or adoptive parents;
2. Conducting home-studies;
3. Meetings among potential foster or adoptive parents and children;
4. Discussion of important legal issues;
5. Explaining and describing permanency plans, informed consent forms, or other important documents;
6. Discussing CFSA processes and procedures for adoption or foster care;
7. Discussing eligibility or program requirements; and
8. Any other circumstances in which auxiliary aids and services are necessary to ensure a Client's rights provided by Federal, state, or local law.

The foregoing list of circumstances is not exhaustive and does not imply that there are not other circumstances when it may be appropriate to provide auxiliary aids and services for effective communication.

E. Provision of Appropriate Auxiliary Aids and Services.

1. **Scheduled Appointments:** CFSA shall make an appropriate auxiliary aid or service available at the time of the appointment, if necessary for effective communication.

2. **Non-scheduled Incidents:** CFSA shall use reasonable efforts to make an appropriate auxiliary aid or service available when requested, if necessary for effective communication. CFSA has three types of non-scheduled incidents: calls to its child abuse hotline, walk-in incidents (walk-ins), and emergency removal situations.

For hotline calls, and any other calls made to or from CFSA, callers may utilize the 711 service.

CFSA has the following procedure for walk-ins: (a) provide the individual with the use of an appropriate auxiliary aid or service, including, when necessary for effective communication and available³, sign language interpretation, to facilitate communication between the individual and staff to address the individual's immediate needs and make arrangements for the individual to return on a scheduled date and time wherein an appropriate auxiliary aid or service, including, when necessary for effective communication, sign language

³ An interpreter will be determined to be unavailable only if CFSA is unable to obtain an interpreter in a timely manner using the steps outlined in Section V.G of this Agreement.

interpretation will be previously arranged and secured; and (b) if there is a hearing companion present with the deaf or hard of hearing individual at the time of the unscheduled interaction, and if the individual and companion agree, CFSA will secure the written consent of both the companion and the individual for the companion to facilitate communication between CFSA and the individual⁴. Option (b) will be utilized only in accordance with Section V.F below. CFSA staff shall not require a companion to interpret.

CFSA shall make reasonable efforts to communicate effectively with deaf or hard of hearing Clients, and shall provide services under Section V.E.1 above when the deaf or hard of hearing individual returns for their scheduled appointment, when necessary for effective communication.

For emergency removal situations, CFSA shall ensure that appropriate auxiliary aids and services, including interpreting services, are provided to those in need of such services. Currently, the Metropolitan Police Department (MPD) provides auxiliary aids and services, including interpreter services, in emergency removal situations to facilitate communication between CFSA, MPD, and the family.

3. Interim Services: CFSA agrees that, between the time an auxiliary aid or service is requested and the time it is made available, CFSA Staff will continue to try to communicate with the Client and/or Companion who is deaf or hard of hearing for such purposes and to the same extent as they would have communicated with the person but for the hearing impairment, using appropriate auxiliary aids and services.

F. Restricted Use of Certain Persons to Facilitate Communication.

Due to concerns about confidentiality and competency, potential emotional involvement, and other factors that may adversely affect the ability to facilitate communication, CFSA shall not require or coerce a family member, caregiver, advocate, or friend of a Client and/or Companion who is deaf or hard of hearing to interpret or facilitate communications between CFSA Staff and the Client and/or Companion, except that such person may provide such assistance if all four (4) of the following factors are present:

1. Such person wishes to provide such assistance;
2. The Client or Companion provides written agreement to the use of such person to interpret or facilitate communication;
3. The Client or Companion has been made aware of the full range of communication facilitating options available free of charge; and

⁴ CFSA's Language Access Policy addresses the procedures for staff to obtain sign language interpretation for an immediate need and for previously arranged interactions.

4. Such use is necessary or appropriate under the circumstances, giving appropriate consideration to any privacy issues that may arise.

G. Procedures for Obtaining Qualified Interpreters in a Timely Manner.

When a qualified interpreter is necessary for effective communication, CFSA shall take the following steps to obtain a qualified interpreter in a timely manner. CFSA will first request a qualified interpreter from the Office of Disability Rights (ODR), which contracts with a sign language interpreting agency to provide a qualified interpreter within five days of the date of the request.

If CFSA is unable to obtain a qualified interpreter through ODR, CFSA will request a qualified interpreter from CFSA's contractor or from among qualified interpreters on CFSA staff, if any.

If CFSA is unable to obtain a qualified interpreter from its contractor or from its staff, CFSA will exert reasonable efforts to contact any qualified interpreting agencies known to CFSA or interpreters who provide services on a freelance basis.

If CFSA is still unable to obtain a qualified sign language interpreter, CFSA will inform the Client and/or Companion who is deaf or hard of hearing that efforts have been taken to secure a qualified interpreter and that the efforts have failed. CFSA will follow up on reasonable suggestions for alternate sources of qualified interpreters, such as a qualified interpreter known to the Client and/or Companion.

H. Video Interpreter Services (VIS).

If VIS technology is used as one of the resources potentially available to CFSA to meet its obligations under this Agreement, Section 504, and Title II of the ADA, CFSA shall ensure that the VIS technology meets the following performance standards:

1. High quality, clear, delay-free, motion-free video and audio over a dedicated high speed internet connection;
2. A clear, sufficiently large and sharply delineated picture of the qualified interpreter's and the Client's/Companion's head, hands, and fingers, regardless of the body position of the Client/Companion;
3. Clear and easily understood transmission of voices; and

4. Efficient set-up and operation by trained and competent CFSA staff members and contractors.

I. Telephonic Communications.

To the extent that public telephones are made available by CFSA, CFSA shall take the following steps to ensure that Clients and/or Companions who are deaf or hard of hearing can communicate effectively by telephone:

Public Telephones: Within sixty (60) calendar days after the Effective Date of this Agreement, CFSA shall provide TTY (also known as TDD) devices at public telephones serving lobbies or general public areas. CFSA may install the required TTY's or make available a sufficient number of portable TTY's.

Wherever portable TTY's are made available, CFSA will provide shelves and electrical outlets compliant with ADA accessibility standards.

Wherever public telephones are available but TTY's are not permanently installed, CFSA will post signs indicating the location of the nearest portable or installed TTY.

Wherever TTY's are permanently installed, CFSA will post signs, identifying them and indicating their location.

VI. Policies and Procedures for Ensuring Effective Communication with Clients and/or Companions Who Are Deaf or Hard of Hearing

A. CFSA revised its policies and procedures for ensuring effective communication with Clients and/or Companions who are deaf or hard of hearing. Due to extensive changes in how requests for auxiliary aids or services are handled, and in order to better meet the needs of deaf or hard of hearing Clients and Companions, CFSA created a new policy, "Services for the Deaf and Hard of Hearing" (Attachment C). The new policy includes:

1. Roles and responsibilities of the CFSA Section 504/ADA Coordinator, including an explanation of how CFSA Staff will work together to ensure effective communication with Clients and/or Companions; who are deaf or hard of hearing;
2. Confidentiality of Client records and information;
3. Provision of appropriate auxiliary aids and services, including assessment of communication needs, standards for determining appropriate auxiliary aids and

services, general circumstances when they will be provided, and documentation of the provision of auxiliary aids and services;

4. Provision of qualified interpreters, readers, and note takers, including timely provision of services, procedures for obtaining qualified interpreters, readers, and note takers, restricted use of certain persons to interpret or facilitate communication, the use of VIS technology (if relevant), and measures to oversee and ensure the quality of the services provided by qualified interpreters, readers, and note takers, in accordance with Section V;

5. Provision of training to new and existing CFSA Staff about the obligation to ensure effective communication with Clients and/or Companions who are deaf or hard of hearing;

6. An explanation of how CFSA will provide notice of nondiscrimination to Clients and Companions, including an explanation of where the notice will be posted;

7. An explanation of how Section 504/ADA grievances may be filed and how the grievance will be resolved; and

8. Development of a method for monitoring the implementation of the revised policies and procedures for ensuring effective communication with Clients and/or Companions who are deaf or hard of hearing.

B. CFSA has implemented the revised policies and procedures to provide effective communication with Clients and/or Companions who are deaf or hard of hearing. The revised policies and procedures have been disseminated to CFSA Staff and published in a CFSA-wide communication piece for CFSA Staff.

VII. Training of CFSA Staff

After the complaint was filed with OCR, CFSA undertook a training program to train staff on their effective communication obligations. The trainings included use of TTY services, use of interpreting services, how and when to request an interpreter or other auxiliary aid or service, how to assess a client's communication needs, ensuring that the communication method chosen is effective, how to document the use of auxiliary aids and services, services provided by the District's Office of Disability rights, and compliance with the employment provisions of the ADA.

After CFSA revised its policies and procedures for providing effective communication with Clients and/or Companions who are deaf or hard of hearing, in

accordance with Section VI, CFSA took the following steps to ensure that CFSA Staff received training on the revised policies and procedures:

- A. CFSA provided training to all CFSA Staff who interact with Clients and/or Companions on its revised policies and procedures for ensuring effective communication with Clients and/or Companions who are deaf or hard of hearing. The training taught CFSA Staff to promptly identify communication needs and preferences of services, and to secure appropriate, effective auxiliary aids and services, including qualified interpreter services, as quickly as possible when necessary. The training included information about: the various degrees of hearing impairment; sensitivity to the needs of persons who are deaf or hard of hearing; dispelling myths and misconceptions about persons who are deaf or hard of hearing; the proper use of qualified interpreters and note-takers; and procedures for accessing appropriate auxiliary aids and services.
- B. CFSA provided training to all CFSA Staff who have interactions with Clients and/or Companions on the use of the TTY device. This training also included instructions on the use of the AT&T Relay System.

VIII. Reporting

A. Auxiliary Aid and Service Logs.

Beginning not later than thirty (30) calendar days after the Effective Date of this Agreement, CFSA shall maintain a log (which may be one log or the aggregate of multiple logs) of information about requests for auxiliary aids and services for clients and/or companions who are deaf or hard of hearing that CFSA receives and CFSA's response (Auxiliary Aid and Service Log).

- 1. The Auxiliary Aid and Service Log shall include the following information:
 - a. date and time that a Client and/or Companion who is deaf or hard of hearing requests an auxiliary aid or service and the type of auxiliary aid or service that is requested;
 - b. a code that identifies the Client and/or Companion who is deaf or hard of hearing who requests an auxiliary aid; or service;
 - c. name and title of the CFSA Staff who makes the determination concerning the request for an auxiliary aid; or service;
 - d. CFSA's decision whether to grant or deny the requested auxiliary aid or service and the basis for the decision;
 - e. the time and date that each auxiliary aid or service is provided and the type of auxiliary aid or service that is provided on each occasion.

(1) If CFSA provides a qualified interpreter for a scheduled appointment, the time and date of the scheduled appointment for which an interpreter is requested; the date and time of arrival of the interpreter; and, where an interpreter is untimely or fails to appear, the reason for the delay or nonappearance, if known to CFSA.

(2) If CFSA provides a qualified interpreter for an unscheduled appointment, the date and time of arrival of the interpreter; and, where an interpreter is untimely or fails to appear, the reason for the delay or nonappearance, if known to CFSA after reasonable inquiry.

- f. any complaints/grievances that CFSA receives about the provision of an auxiliary aid or service to a client and/or companion who is deaf or hard of hearing, and for each complaint, the outcome of the investigation or review.

2. Such Auxiliary Aid and Service Log shall be retained by CFSA throughout the balance of the Term of this Agreement.

3. CFSA shall submit a copy of the Auxiliary Aid and Service Log(s) to OCR within twenty (20) days after the end of each of the following periods listed below. The Auxiliary Aid and Service Log shall cover all requests for auxiliary aids and services during the specified time period.

- a. 30-90 calendar days after the Effective Date of the Agreement;
- b. 91-180 calendar days after the Effective Date of the Agreement; and
- c. 181-270 calendar days after the Effective Date of the Agreement.

B. Compliance Reports.

Within ninety (90) days of the Effective Date of this Agreement, CFSA shall provide OCR with the following:

- 1. Documentation and a letter certifying that the communication of information required by Sections IV and VI of this Agreement has occurred. The letter shall specify the date(s) that such communication occurred, the method of communication, and the persons to whom the information was provided. Documentation shall include copies of the Notice of Nondiscrimination and information about the revised policies and procedures for effective communication for Clients and/or Companions that are deaf or hard of hearing that was provided to CFSA Staff; and

2. Documentation and a letter certifying that the training of CFSA Staff described in Section VII of this Agreement has been completed. The letter shall specify the date(s), time(s) and location(s) of the training, the person(s) conducting the training, the content of the training, and the names and titles of those who participated in the training.

Within three hundred (300) calendar days after the Effective Date of this Agreement, CFSA shall provide OCR with documentation and a letter certifying that CFSA has completed all the actions required by the Agreement.

IX. Signatures

Irvin B. Nathan
Attorney General of the District of Columbia

/s/

1/23/13

By Ellen Efros
Deputy Attorney General
Office of the Attorney General of the District of Columbia

Date

/s/

1/7/13

Barbara J. Holland
Regional Manager, Region III
U.S. Department of Health & Human Services
Office for Civil Rights

Date