



Colette S. Peters
Director
Oregon Department of Corrections
2575 Center St. NE
Salem, OR 97301-4667

Dear Director Peters:

The National Association of the Deaf (NAD), Helping Educate to Advance the Rights of the Deaf (HEARD), and the Registry of Interpreters for the Deaf (RID) submit this letter respectfully demanding that the Oregon Department of Corrections (ODOC) immediately suspend its recruitment and use of inmates to serve as American Sign Language (ASL) interpreters as outlined in a newsletter dated April 15, 2014 from Superintendent R. Angelozzi. A copy of this newsletter is attached for your convenience. This newsletter initiates a process for inmates to apply to serve as an ASL interpreter through the Inmate Work Programs. We strongly believe using hearing inmates to interpret for deaf inmates would be devastating to the health, safety, and welfare of deaf inmates in Oregon.

Established in 1880, the NAD is the oldest civil rights organization in the United States, and its mission is to preserve, protect and promote the civil, human and linguistic rights of 48 million deaf and hard of hearing people in this country. HEARD was incorporated in the District of Columbia in February 2011. HEARD created and maintains the only national database of deaf prisoners, and has volunteers nationwide who conduct deaf prisoner/defendant research, assist deaf prisoners with access concerns, investigate possible wrongful conviction cases, and educate the deaf community about the law and current legal issues, among other things. RID is a national membership organization that plays a leading role in advocating for excellence in the delivery of interpretation and transliteration services between people who use sign language and people who use spoken language. Collectively, we have been contacted by members of the deaf community, interpreters, and advocates expressing grave concerns about ODOC's plans to employ inmates as interpreters.

It is important to understand the context of ODOC and its provision of auxiliary aids and services with respect to current systemic challenges for deaf and hard of hearing prisoners. As you are aware, a lawsuit was filed against the Oregon Department of Corrections on behalf of deaf and hard of hearing inmates for ODOC's failure to provide them with communication access including but not limited to qualified interpreters. This lawsuit, *Baldrige v. Oregon Department of Corrections*, led to a Settlement Agreement that mandates the provision of interpreters to inmates and this Agreement references an "Effective Communication for Deaf/Hearing Impaired Inmates" policy. A copy of this Settlement Agreement as well as the Effective Communication policy are attached for your convenience.

We take issue with "the provision of inmate interpreters," which appears to be under review by ODOC for its facilities statewide pursuant to Section 3(G). According to this section, ODOC "agrees to provide hearing-impaired inmates with a qualified non-inmate interpreter for circumstances in which it would otherwise provide a qualified inmate interpreter *if no qualified inmate interpreter is housed at their facility.*" (emphasis added).

Using hearing inmates as ASL interpreters for deaf inmates raises two grave concerns: noncompliance with federal laws and regulations; and placing deaf and hard of hearing inmates at great risk through state-sanctioned, forced reliance on other inmates. These two concerns are explained further herein.

With respect to the first concern, the Americans with Disabilities Act of 1990 (ADA) requires the use of “qualified interpreters.” 42 U.S.C. § 12141 et seq. The implementing regulations define a qualified interpreter as one “who is able to interpret effectively, accurately, and impartially both receptively and expressively, using any necessary specialized vocabulary.” 28 C.F.R. § 35.104. This language is properly referenced in the ODOC Effective Communication policy under Section II(E). In fact, the policy expressly states “Inmates will not be used as qualified interpreters.” Consequently, the Settlement Agreement is in conflict with ODOC policy as well as federal law and regulations.

Inmate interpreters can never be “qualified interpreters” for at least two reasons: acquisition of American Sign Language is a labor-intensive process requiring extensive education, practice, and exposure to the larger deaf community; and the very nature of inmates negates the important element of being able to “impartially” interpret pursuant to federal regulation and ODOC policy. The April 15 newsletter advertisement states, “Inmates will be tested on their knowledge of American Sign Language.” RID has over 40 years experience in evaluating and certifying interpreters. Additionally, both the NAD and HEARD are intimately familiar with the need for comprehensive training and testing of interpreters. Collectively, we are deeply concerned about the effectiveness of the assessment advertised in this newsletter.

The NAD and RID jointly developed a national certification program that maintains strict adherence to nationally recognized testing industry standards of validity, reliability, equity, and legal defensibility. Our three-pronged approach to certification involves tests for minimum professional standards, professional development requirements, and adherence to the NAD-RID Code of Professional Conduct. As a result, our certification sets expectations for interpreting services throughout the profession. Possessing an NAD-RID certification is a highly valued asset for an interpreter reflecting a commitment to lifelong learning and adherence to high ethical standards. The first step in assessing an interpreter’s qualifications is determining whether the interpreter possesses current, valid certification. “Knowing” sign language is not enough. Taking sign language classes is insufficient. All interpreters hired by the ODOC should possess and demonstrate the necessary skill, appropriate knowledge, and competent ability for the level of communications provided within the prison system. At a minimum, all interpreters working for the ODOC should be certified.

The second concern is the inherent imbalance of power created by using hearing inmates as interpreters for deaf inmates. In general, it is extremely dangerous for prisoners with disabilities to rely on other prisoners’ assistance for basic needs. “It creates a security risk if prisoners pay other prisoners for services because in a prison economy, if prisoners do not pay their debts, it can lead to violence.” *Clark v. California*, 739 F. Supp. 2d 1168, 1194 (N.D. Cal. 2010). Notably, in the prison economy, this sort of forced reliance on inmate “interpreters” too often leads to predatory behavior including extortion and sexual exploitation of deaf prisoners.

At a minimum, using inmates as ASL interpreters raises grave concerns over issues of confidentiality, impartiality, and conflicts of interest that may arise in the course of interpreting for “activities events [sic], Staff/Inmate interactions, and educational programs” as outlined in the April 15 newsletter. For instance, one inmate acting as an “interpreter” recently expressed grave concerns about his ability to effectively interpret for a deaf prisoner, but shared that his fear of reprisal from corrections officials at his prison prevented him from disclosing and resulted in the deaf prisoner not receiving full access to important information. In other situations, deaf prisoners have been assaulted by prisoners for reporting that inmate interpreters are not qualified. Yet other deaf prisoners report being afraid that if they report

unqualified inmate interpreters, then they will be punished by the withholding of any interpreter or by retaliation. None of these concerns arise if a neutral, qualified interpreter is provided pursuant to federal disability rights laws and ODOC's policy on Effective Communication.

In using inmates as ASL interpreters, the ODOC will be in violation of federal law and regulations and its own policy on Effective Communication. The NAD, HEARD, and RID demand that the ODOC suspend this program immediately.

The NAD, HEARD, and RID are sending a copy of this letter to the Department of Justice (DOJ), the Federal Bureau of Prisons (BOP), and the Oregon Governor to ask that these government entities become involved and work with us to put an end to this misguided step.

NAD, HEARD, and RID are open to engaging in a dialogue with the ODOC on this matter to protect the health, safety, welfare, and civil rights of all deaf and hard of hearing prisoners in Oregon.

Sincerely,



Shane Feldman
Executive Director
RID



Howard A. Rosenblum
Chief Executive Officer
NAD



Talila Lewis
Executive Director
HEARD

CC: Eve Hill, Senior Counselor to the Assistant Attorney General, Department of Justice
Charles E. Samuels, Jr., Director, Federal Bureau Of Prisons
John Kitzhaber, Governor of Oregon