

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

NATIONAL FEDERATION OF THE BLIND, *et al.*,

Plaintiffs,

v.

Case No. 3:23cv127

VIRGINIA DEPARTMENT OF CORRECTIONS, *et al.*,

Defendants.

**DEFENDANTS' RESPONSE IN OPPOSITION  
TO PLAINTIFFS' PARTIAL MOTION FOR SUMMARY JUDGMENT**

Defendants Virginia Department of Corrections (“VDOC”), Chadwick Dotson, Barry Marano, Darrell Miller, Kevin McCoy, Lakeisha Shaw and Officer D. Smith, by counsel, hereby submit the following Response in Opposition to the Plaintiffs’ Partial Motion for Summary Judgment. (ECF Nos. 189, 200.)

**INTRODUCTION**

The Plaintiffs are not entitled to partial summary judgment in this action. Although the Plaintiffs seek summary judgment “on their claims that VDOC’s failure to provide accessible library, tablet, and kiosk technologies violates the ADA, Section 504, and the VDA,”<sup>1</sup> not one of the individual Plaintiffs has exhausted their claims prior to filing this lawsuit as required by the Prison Litigation Reform Act and the Virginia Code. And, to the extent that the Plaintiffs contend that the National Federation of the Blind of Virginia (“NFB-VA”) is eligible for relief on behalf of the individual Plaintiffs without the need to exhaust, this is incorrect. Further, as explained herein, the individual Plaintiffs do not show how they have been denied effective communication in, or meaningful access to, VDOC’s programs and services. This is essential to prevail on any ADA,

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<sup>1</sup> Plaintiffs’ claims are brought under the Americans with Disabilities Act (“ADA”), Section 504 of the Rehabilitation Act (“RA”), and the Virginians with Disabilities Act (“VDA”).

RA, and VDA claim. In fact, the evidence in this case is that VDOC provides a host of accommodations for blind and visually impaired inmates on its JPay tablets and kiosks, and in its libraries, but that the majority of the Plaintiffs have never even sought out those services. Plaintiffs demonstrate neither undisputed facts nor entitlement to judgment as a matter of law, and therefore VDOC respectfully requests that the Plaintiffs' Partial Motion for Summary Judgment be denied.

### **EVIDENCE**

In support of their Response in Opposition, the Defendants incorporate by reference all of their exhibits submitted in support of their Motion for Summary Judgment and found on the docket at ECF Nos. 210-1 through 210- 37, and ECF No. 216-1 through 217-2.

Defendants also submit the following additional evidence in support of this Response in Opposition: Supplemental Declaration and Enclosures of J. DeBerry; Supplemental Declaration of L. Shaw; and, Supplemental Declaration of L. Talbott. The Defendants respectfully request that the Court consider these transcripts, affidavits, declarations, exhibits, and their enclosures as evidence in support of their opposition to the Plaintiffs' Partial Motion for Summary Judgment. *See Fed. R. Civ. P. 56(c).*

### **STATEMENT OF DISPUTED FACTS**

1. Paragraph No. 15 is disputed insofar as it is implied that Mr. Stravitz is still visually impaired. Mr. Stravitz has undergone surgery to remove his cataracts. Stravitz Dep. 88:6-13. In his deposition, he testified that he was no longer impeded from seeing and functioning independently. Stravitz Dep. 196:1-11. Thus, Mr. Stravitz is no longer disabled, nor does he require further accommodations to access VDOC programs and services. Stravitz Dep. 196:1-11.
2. Paragraph No. 21 is disputed insofar as it is implied that any of the Plaintiffs, including Mr. Hajacos, has ever been required to pay another inmate to read/write a document for him. Unit

Managers, Counselors, ADA Coordinators, ADA Assistant Coordinators, and other staff are available to assist him, and all the Plaintiffs, with reading and writing documents. Stith Decl. ¶¶ 4, 13-14; D. Turner Aff. ¶¶ 15, 18, 21; Shaw Supp. Decl. ¶¶ 12-14; Talbott Supp. Decl. ¶¶ 12-14.

### *VDOC Law Libraries*

3. Paragraph No. 23 is disputed. Defendants do not dispute that “commercially-available ‘screen reader’ or screen magnification software” is available, but dispute that all of VDOC’s law libraires lack the capability to narrate and/or magnify without such software, and the necessity of it. The computers in the Greenville Law Library have both a magnification and narrator function. Phillips Dep. 94:7-9; 127:8. The narrator function will read aloud text that the user hovers over on the computer, and the user can control the speed of the narration. Phillips Dep. 56:14-20. The narrator function reads aloud material from Lexis Nexis on the Greenville Law Library computers. Phillips Dep. 57:19-21; 58:1.

4. Paragraph No. 24 is disputed. Defendants deny that Law Library staff have ever received a request for an electronic, Braille, or Audio Recording of any of Deerfield’s Law Library resources. Delbridge Dep. 85:22; Delbridge Dep. 86:1-5.

5. Defendants dispute the statement in Paragraph No. 25 that Greenville’s Law Library provides resources in “standard print only.” Ms. Phillips, the Law Librarian at Greenville, is available to print legal materials for inmates upon request, including providing forms and legal materials in large print. Phillips Dep. 23:22-25:1; 83:1-10.

6. Paragraph No. 26 is disputed. Ms. Delbridge, the Deerfield Program Support Technician,<sup>2</sup> manages the Deerfield Law Library and is available to answer questions from inmates, such as

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<sup>2</sup> Ms. Delbridge’s technical title is “Program Support Technician,” but for all intents and purposes, she is the Deerfield Law Librarian, as she manages the Deerfield Law Library. Delbridge Dep. 14-1-9; Delbridge Dep. 23:22-25:1. Therefore, VDOC refers to Ms. Delbridge as the Deerfield Law Librarian.

requests for specific legal materials, or forms to be printed or provided in an accessible format. Delbridge Dep. 23:22-25:1; Delbridge Dep. 22:8-14; Delbridge Dep. 101:12-14.

7. Defendants dispute Plaintiffs' statements in Paragraph No. 27 that inmate library aids are "not permitted to assist blind prisoners with their legal research." Library aids cannot provide legal advice to other inmates, but they are available to pull requested case law and other resources for inmates upon request, which Ms. Delbridge then prints for the inmates and can provide in alternative formats. Delbridge Dep. 22:8-14; Delbridge Dep. 101:12-14; Phillips Dep. 96:18-19.

8. Paragraph No. 28 is disputed. The computers in the Law Libraries at Greenville have both a magnification and narrator function. Phillips Dep. 94:7-9; 127:8. The narrator function will read aloud text that the user hovers over on the computer and the user can control the speed of the narration. Phillips Dep. 56:14-20. The narrator function reads aloud material from Lexis Nexis on the Greenville Law Library computers. Phillips Dep. 57:19-21; 58:1.

9. Paragraph No. 29 is disputed. The Greenville Law Librarian has never received a request for Braille and/or an audio recording from a blind or low vision inmate, and if she did, she would contact Greenville's ADA Coordinator to determine how best to proceed to accommodate that individual. Philips Dep. 84:5-7; 85:16-18.

10. Paragraph No. 31 is disputed. Currently, the only inmate who uses the SARA Machine in the Deerfield Law Library is Plaintiff Shabazz, and he does not have to request a time to use the Machine. Delbridge Dep. 20:7-9; 116:13-21. Mr. Shabazz has access to the SARA Machine in the Deerfield Law Library every day of the week without needing to submit a request. Shabazz Dep. 15-16. Mr. Shabazz has access to the SARA Machine for up to thirty-two hours a week. Delbridge Dep. 172:1.

11. Paragraph No. 32 is disputed. All of the Plaintiffs have access to VDOC Counselors, Unit

Managers, ADA Assistant Coordinators, and other staff who are qualified readers and are available to assist them with reading and writing documents. Stith Decl. ¶¶ 4, 13-14; D. Turner Aff. ¶¶ 15, 18, 21; Shaw Supp. Decl. ¶¶ 12-14; Talbott Supp. Decl. ¶¶ 12-14.

**12.** Paragraph No. 34 mischaracterizes the cited record. Plaintiffs' Exhibits 29 and 30 are Offender Request forms in which Mr. Shabazz requested JAWS software. Pl.'s Exs. 29–30. The responses to those requests do not show that staff declined to purchase the software; to the contrary, staff notified Mr. Shabazz that an order for the software had been sent for processing. Pl.'s Ex. 30. Plaintiffs' Exhibit 31 is a request from Mr. Shabazz for a braille typewriter. Pl.'s Ex. 31. In response to the request, Defendant Shaw asked for further explanation as to whether Mr. Shabazz knew braille or used braille for legal documents. *Id.* None of these exhibits indicate that staff refused to provide assistance.

**13.** Paragraph No. 35 is disputed. The SARA Machine and Merlin Machine are available for use in the Deerfield Law Library and Recreational/Educational Library for all inmates. Delbridge Dep. 114:1-2; Geist Dep. 87:6-10. If inmates have any questions about the availability of the these machines, they can inquire with the Deerfield librarians, their Counselor, Unit Manager, or an ADA Assistant Coordinator. Stith Decl. ¶¶ 4-10, 13-14; D. Turner Aff. ¶¶ 4-10, 15, 18, 21; Delbridge Dep. 47:16-18; Geist Dep. 146:10-20.

***VDOC Recreational/Educational Libraries***<sup>3</sup>

**14.** Paragraph No. 37 is disputed. There is no internet capability on the Deerfield Recreational/Educational Library computers and therefore there are not internet versions of

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<sup>3</sup> The Plaintiffs use the term “Education Libraries” in their Motion for Summary Judgment, whereas VDOC utilizes the term “Recreational Libraries” in its Motion for Summary Judgment and Memorandum in Support Thereof. (*See* ECF No. 210, ps. 10-12.) However, these are the same libraries. To avoid confusion, VDOC uses the term “Recreational/Educational” libraries throughout this Memorandum to refer to these libraries.

Wikipedia and/or job search engines on the computers. Phillips Dep. 51:1-4; Geist Dep. 20:12; Geist Dep. 55:1-10. The Deerfield Librarian assists inmates with accessing materials such as legislative materials, grants, and course offerings by locating that information for the inmate and providing it to him in a format accessible to him, whether it be standard or large print. Geist Dep. 44:15-22; 45:1-13; Geist Dep. 49:5-8; 146:10-20; Geist Dep. 147:1-12.

**15.** Paragraph No. 38 is disputed insofar as it is implied that screen reader technology is necessary to access the materials on the Deerfield Recreational/Educational Library computers. The Deerfield Recreational/Educational Library computers are of limited use and do not have internet capabilities. Delbridge Dep. 80:7-13; Geist Dep. 20:12; Geist Dep. 55:1-10. The computers house the library catalog and a set collection of documents, which the Deerfield Librarian periodically updates. Geist Dep. 80:7-13. The electronic catalog of books on Deerfield's recreational computers is "very user friendly"; it is in large print and includes pictures of the covers of the books available in the library. Geist Dep. 80:16-20. If a blind or visually impaired inmate wishes to access the limited information on the computers, the Deerfield Librarian assists him with accessing materials such as legislative materials, grants, and course offerings by locating that information for the inmate and providing it to him in a format accessible to him. Geist Dep. 44:15-22; 45:1-13; Geist Dep. 49:5-8; 146:10-20; Geist Dep. 147:1-12.

**16.** Paragraph No. 39 is disputed. If a blind or visually impaired inmate wishes to access the limited information on the computers, the Deerfield Librarian assists him with accessing those materials such as legislative materials, grants, and course offerings by locating that information for the inmate and providing it to him in a format accessible to him. Geist Dep. 44:15-22; 45:1-13; Geist Dep. 49:5-8; 146:10-20; Geist Dep. 147:1-17. The Deerfield Recreational/Education Library has both audio books and CD players that inmates can use to check out the audio books. Geist Dep.

121:1-5. The Deerfield Recreational/Education Library also has a collection of large print books and the Deerfield Recreational/Educational Librarian assists inmates with checking out audio books from the Library of Congress and other outlets. Geist Dep. 149:4-5; Geist 51:7-8; Geist Dep. 148:5-22.

**17.** Paragraph No. 40 is disputed. The Deerfield Recreational/Educational Library has both a SARA Machine, that rotates through the school classrooms and library, and a Merlin Machine to allow visually impaired inmates to read printed materials. Geist Dep. 86:4-9; 18:1-9. The Deerfield Recreational/Educational Librarian receives annual ADA training. Geist Dep. 14:17-22; 15:1-5; Geist Dep. 33:17-22.

**18.** Paragraph No. 41 is disputed. The Deerfield Recreational/Educational Library has both audio books and CD players that inmates can check out for use of the audio books. Geist Dep. 121:1-5. The Deerfield and Greenville Recreational/Education Libraries also have a collection of large print books, and the Deerfield Recreational/Educational Librarian assists inmates with checking out audio books from the Library of Congress and other outlets. Geist Dep. 149:4-5; Geist 51:7-8; Geist Dep. 148:5-22; Shumate Decl. ¶ 7. The Greenville Recreational/Educational Librarian has never received a request for a service from a blind or visually impaired inmate. Shumate Decl. ¶ 12.

#### ***JPay Tablets and Kiosks***

**19.** Defendants dispute Plaintiffs' statement in Paragraph No. 46 of their Statement of Facts that inmates receive "access to VDOC notices" on their JPay Tablets. Welch Decl. ¶ 4.

**20.** Defendants dispute Plaintiffs' statement in Paragraph No. 48 that blind inmates are unable to type on the keyboard of the JPay kiosks. Numerous JPay kiosks in VDOC facilities have a Braille keyboard, including one in the gym at Deerfield, which inmates have access to every day. Welch

Decl. ¶ 11; Pl's Ex. 28, Shabazz Decl. ¶ 20; Shaw Decl. ¶ 6.

**21.** Defendants dispute Plaintiffs' statement in Paragraph No. 49 of their Statement of Facts that inmates receive "messages from VDOC" on their JPay Tablets. Welch Decl. ¶ 4.

**22.** Paragraph No. 51 is disputed. VDOC has multiple JPay kiosks with Braille keyboards. Welch Decl. ¶ 11; Pl's Ex. 28, Shabazz Decl. ¶ 20; Shaw Decl. ¶ 6. Some of the evidence cited by Plaintiffs also do not support their assertion that no assistive technology is available on the kiosks. Exhibit 38, an Officer's Log Sheet relating to Mr. McCann, notes that Mr. McCann reported he had logged onto the kiosk but that his tablet did not have the correct charger. Pl.'s Ex. 38, NFBV 013164. There are no other references to the kiosks in that exhibit. Similarly, Plaintiffs' Exhibits 39 and 40, respectively an Officer's Log Sheet relating to Mr. Shabazz and an excerpt from the Greenville ADA Accommodation Chart pertaining to Mr. Courtney, do not include any information regarding the kiosks. Pl.'s Exs. 39-40. In addition, Ms. Talbott's deposition testimony, also cited by the Plaintiffs, states that the JPay kiosks offer different font sizes. Talbott Dep. 101:13-15.

**23.** Paragraph No. 52 is disputed. VDOC tablets are currently equipped with accessibility features for visually impaired inmates that can be individually activated on each tablet. Welch Decl. ¶ 8. These accessibility features include a zoom and magnification feature that allows an inmate to make the screen bigger and zoom in on text or images on the tablet. Welch Decl. ¶ 9. JPay tablets are also equipped with a "talk back" feature for secure messaging. Under this feature, the text will speak back to the inmate; an inmate can run his cursor over the message and the message be read aloud to the inmate. This feature is currently available on all VDOC inmate tablets, when activated. Welch Decl. ¶ 10. Inmates can also be provided with an external Braille keyboard that plugs into their tablet. Welch Decl. ¶ 11.

**24.** Paragraph No. 53 is disputed. JPay tablets have accessibility features for blind and low vision

inmates, as outlined in the above paragraph. Welch Decl. ¶¶ 8-11.

**25.** Paragraph No. 55 is disputed. Plaintiffs' Exhibit 46 is a document reflecting that Mr. McCann did not request accessible technology on his JPay device, but rather, to purchase a JPay 7 Tablet, which had a larger screen than the tablet he had at that time. Pl.'s Ex. 46; Shaw Supp. Decl. ¶¶ 16-18. Further, VDOC did not deny Mr. McCann's request for a JPay 7 Tablet; instead, staff asked whether he had the money to purchase the device. Pl.'s Ex. 46. 26.

**26.** Paragraph No. 56 is disputed. In Paragraph 56, Plaintiffs cite to grievance records regarding Mr. Shabazz's request for a laptop and handheld device and software to connect to his JPay tablet; the grievance was denied and the denial upheld on appeal. Pl.'s Exs. 41, 47-48. But in another Written Complaint, included in Plaintiffs' Exhibit 48, Mr. Shabazz again complained that he was not able to access his JPay player. Pl.'s Ex. 41, NFBV 010396. In response to that complaint, Defendant Shaw responded that the JPay "contractor has been contacted and notified. This matter has been forwarded and addressed so that it can be looked into and handled." *Id.* Thus, the evidence cited by the Plaintiffs shows that VDOC staff did not refuse to try to accommodate Mr. Shabazz, but instead continued to work to address his concerns with JPay.

**27.** Paragraph No. 60 is disputed. Previously, VDOC made the JPay 7 model tablet available for inmates to purchase. This model had a larger screen than the version then in use by most of the inmate population. However, the JPay 6 model tablet, which has a screen approximately the same size as the JPay 7, is now provided to inmates for free. Shaw Supp. Decl. ¶¶ 16-18.

**28.** Paragraph No. 61 is disputed. JPay tablets and kiosks have accessibility features for blind and low vision inmates. Welch Decl. ¶¶ 8-11; Courtney Dep. 204:17-205:1. Mr. Stravitz and Mr. Courtney have testified that they have used the JPay tablets and kiosks without a problem. Stravitz Dep. 105:4-24; Stravitz Dep. 173:5-11; Courtney Dep. 177:10-11. Mr. Courtney testified in his

deposition that he had no problem using his JPay tablet because “it comes with accessibility features.” Courtney Dep. 177:10-11. Mr. Stravitz testified that he never requested any accessibility features for his JPay tablet and that he uses the kiosk without an issue. Stravitz Dep. 173:1-4.

*VDOC's Paper-Based Processes*

**29.** Paragraph No. 62 is disputed to the extent it is implied that grievance paperwork is inaccessible. If an inmate is unable to read or write a grievance form, he may ask any Greensville or Deerfield staff member for assistance. VDOC staff make daily rounds in inmate’s housing units. If an inmate would like assistance with writing any grievance document, he may request the assistance of his Unit Manager, Counselor, an ADA Assistant Coordinator, or any other VDOC staff member. DeBerry Aff; ¶ 11 Kelly Decl. ¶ 11; Stith Decl. ¶¶ 4-14; D. Turner Aff. ¶¶ 3-6; Shaw Supp. Decl. ¶ 15; Talbott Supp. Decl. ¶ 15.

**30.** Paragraph No. 63 is disputed to the extent it is implied that inmates cannot make verbal requests for medical assistance or that staff are unavailable to assist with completing any medical documents. Deerfield and Greensville Correctional officers, Counselors, Unit Managers, and Assistant ADA Coordinators make rounds daily and monthly in every Deerfield Housing Unit. An inmate can notify any one of these individuals to contact the medical department for him or complete a Sick Call request. Shaw Supp. Decl. ¶¶ 12-14; Talbott Supp. Decl. ¶¶ 12-14; Shaw Supp. Decl. ¶ 15; Talbott Supp. Decl. ¶ 15.

**31.** Paragraph No. 64 is disputed to the extent it is implied that accommodations may only be requested in writing. Inmates may also make requests verbally, or even through third parties. Talbott Dep. 171:7-174:13. Further, VDOC staff make daily rounds in inmate’s housing units. If an inmate would like assistance with reading or writing any document, he may request the assistance of his Unit Manager, Counselor, or any other VDOC staff member. DeBerry Aff; ¶ 11;

Kelly Decl. ¶ 11; Stith Decl. ¶¶ 4-6; D. Turner Aff. ¶¶ 3-7. ADA Coordinators and Assistant Coordinators make rounds twice per month in housing units which house ADA inmates, and they are available to assist any ADA inmate with any paperwork that he may need completed. Turner Aff. ¶¶ 3-7.; Shaw Supp. Decl. ¶ 15; Talbott Supp. Decl. ¶ 15.

**32.** Paragraph No. 65 is disputed to the extent it is implied that the disciplinary process relies entirely on written materials. The contents of a written disciplinary charge, including the description of the offense, the inmate's rights, and any penalty offer, are read aloud to the inmate by the serving officer at the time of service. Stapleton Dep. 24:11-26:18. At this time, the inmate is also advised that he may receive assistance from a staff or inmate advisor. Stapleton Dep. 26:19-27:1. Throughout the disciplinary process, from the time of service through appeal, the inmate may be assisted by an advisor. Stapleton Dep. 22:9-20. The inmate may submit questions about the disciplinary process to staff in writing or through their advisor. Stapleton Dep. 27:17-28:14. Disciplinary hearings are conducted before a hearing officer in a manner that allows for voice recording. Stapleton Dep. 20:2-14. The hearing officer verbally notifies the inmate of their decision and any penalty assessed. *Id.*

**DEFENDANTS' STATEMENT OF ADDITIONAL FACTS**

***Additional Facts about the Plaintiffs and VDOC Libraries***

**33.** Mr. Hajacos testified that he has never been to the Greenville Law Library. Hajacos Dep. 104:17-19

**34.** Mr. Stravitz has been employed in the Deerfield Recreational/Educational Library as a library aid. He was hired into this position prior to his cataract surgery, and he received accommodations for his job, including a magnifying screen for the computer, a dark marker to write with, and bolder and darker labels to identify books. Stravitz Dep 189:10-24.

**35.** The computers in the Greensville and Deerfield Law Libraries host Lexis Nexis accounts for inmates and store limited print documents; inmate aids and the Law Librarians help inmates locate and print cases or documents for them, which can be made available in large print. Delbridge Dep. 66:15-19; Delbridge Dep. 71:13-15; Delbridge Dep. 22:8-14; Phillips Dep. 93:12-16; Phillips Dep. 96:12-15; Phillips Dep. 23:22-25:1; 83:1-10; Delbridge Dep. 24:16-17.

**36.** The Deerfield Law Library houses a SARA Machine and the Deerfield Recreational/Educational Library houses a Merlin Machine for inmates' use. If a visually impaired inmate wishes to read a case or any other document, that case or document can be printed and the inmate can read the case or document on the SARA in the Deerfield Law Library, or with the Merlin Machine in the Deerfield Recreational/Education Library. Delbridge Dep. 72:21-22; 73:1-2; Geist Dep. 87:6-10; Geist Dep. 49:16-21.

**37.** The Deerfield Law Librarian prints requested materials for Mr. Shabazz and he then reads those materials on the SARA Machine. Delbridge Dep. 23:22-25:1; Delbridge Dep. 176:17-20. The Deerfield Law Librarian prints legal cases for Mr. Shabazz from Lexis Nexis without watermarks so that those documents may be read aloud to him on the SARA Machine. Delbridge Dep. 176:17-20.

***Facts regarding Phones, TTY Phones, Videophones, and Visitation***

**38.** Greensville and Deerfield offer a variety of ways for inmates to meet and communicate with friends, family, and attorneys. Shaw Supp. Decl. ¶ 4; Talbott Supp. Decl. ¶ 4.

**39.** Push-button telephones are available in every housing unit at Deerfield and Greensville. Inmates in every housing unit can use these phones as available during any day of the week. Shaw Supp. Decl. ¶ 5; Talbott Supp. Decl. ¶ 5.

40. TTY<sup>4</sup> phones are available housing units at Greenville and Deerfield, but disabled inmates who are not housed in those units can request to use the TTY phones. The TTY phones are available for use by inmates daily to speak with friends and family. Shaw Supp. Decl. ¶ 6; Talbott Supp. Decl. ¶ 6.

41. Videophones are also available for use by inmates at Greenville and Deerfield. These videophones are available daily for inmates to speak with friends and family. These videophones allow inmates to speak with friends and family by using screens to see and hear one another. Shaw Supp. Decl. ¶ 7; Talbott Supp. Decl. ¶ 7.

42. Greenville and Deerfield also offers in-person visitation for friends and family. Inmates can meet individually with their approved friends and family at scheduled times. Shaw Supp. Decl. ¶ 8. Talbott Supp. Decl. ¶ 8.

***Facts Regarding Exhaustion of Administrative Remedies***

43. Operating Procedure (“OP”) 866.1, Offender Grievance Procedure governs VDOC’s inmate grievance procedure. DeBerry Aff. Encl. A; Phillips Aff. Encl. A.

44. The first written step in VDOC’s grievance process is the filing of an Informal/Written Complaint. DeBerry Aff. ¶ 6; Kelly Decl. ¶ 6 and Encls. A.

45. The next step in VDOC’s grievance process is the filing of a Regular Grievance. When filing a Regular Grievance, the inmate must attach any required documentation to the Regular Grievance, including documentation. Beginning with the June 1, 2022 amendment to OP 866.1, if an inmate is specifically grieving a failure to accommodate his disability, he should attach his Request for

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<sup>4</sup> TTY stands for “teletypewriter” and is a type of phone designed for hearing impaired individuals so that the individual sees a screen and types a text message to the recipient. Shaw Supp. Decl. n.1.

Reasonable Accommodation form to have his Regular Grievance accepted at inmate. DeBerry Aff; ¶ 7 Kelly Decl. ¶ 7 and Encls. A.

46. Those Regular Grievances that do not meet the filing requirements of OP 866.1 are returned to the inmate noting the reason for the return on the intake section of the Regular Grievance form. DeBerry Aff; ¶ 8 Kelly Decl. ¶ 8 and Encls. A.

47. If a Regular Grievance meets the filing requirements of OP 866.1 it is accepted at intake and there are three (3) possible levels of review. For issues regarding an inmate's disability accommodations and retaliation, Level II is the highest level of review. Aff; ¶ 9 Kelly Decl. ¶ 9 and Encls. A.

***Facts regarding the Deerfield and Greenville Plaintiffs' Grievance Reports***

48. A Grievance Report is a VDOC document that reflects all Informal Complaints, Regular Grievances that were accepted at intake, and appeals to Level II of Regular Grievances, that have been filed by an inmate. All Informal/Written Complaints, accepted Regular Grievances, and appeals of Regular Grievances are logged on an inmate's Grievance Report in accordance with VDOC OP 866.1. DeBerry Aff; ¶ 12; Kelly Decl. ¶ 12.

49. Therefore, all Informal/Written Complaints, accepted Regular Grievances, and appeals to Level II that the Plaintiffs filed between January 1, 2014 and January 1, 2024 are reflected on each individual's Grievance Report. DeBerry Aff; ¶ 12; Kelly Decl. ¶ 12.

***Facts regarding the Plaintiffs' Failure to Exhaust their Claims***

50. According to Mr. Stravitz's Grievance Report, Mr. Stravitz has never filed an Informal/Written Complaint about being denied accessible tablet, kiosk, or library technology for at Deerfield. DeBerry Aff. ¶ 32, Encl. D.

51. According to Mr. Courtney's Grievance Report, Mr. Courtney has never filed an

Informal/Written Complaint about being denied accessible tablet, kiosk, or library technology for at Greenville. Phillips Decl. ¶ 14, Encl. B.

**52.** According to Mr. Shaw's Grievance Report, Mr. Shaw filed two Informal/Written Complaints about his JPay tablet in 2017 and 2022, but did not file any accepted Regular Grievances about this issue. DeBerry Aff. ¶¶ 14-16, Encl. B.

**53.** According to Mr. Shaw's Grievance Report, Mr. Shaw did not file any Informal/Written Complaints about accessible technology in the Deerfield libraries. DeBerry Aff. ¶ 14, Encl. B.

**54.** According to Mr. Hajacos' Grievance Report, Mr. Hajacos filed an Informal/Written Complaint about his JPay tablet in October 2023 and an accepted Regular Grievance about his tablet in December 2023. Phillips Decl. ¶ 23, Encl. C. However, Mr. Hajacos did not appeal the Regular Grievance to Level II. *Id.*

**55.** According to Mr. Hajacos' Grievance Report, Mr. Hajacos did not file any Informal/Written Complaints about accessible technology in the Greenville libraries. Phillips Decl. ¶ 21, Encl. C.

**56.** According to Mr. McCann's Grievance Report, Mr. McCann did not file any Informal/Written Complaints about his JPay tablet or accessible technology in the Deerfield libraries. DeBerry Aff. ¶ 35, Encl. E.

**57.** According to Mr. McCann's Grievance Report, Mr. McCann filed an Informal/Written Complaint in October 2022 about the accessibility of the JPay kiosks. However, Mr. McCann did not file an accepted Regular Grievance on this issue. DeBerry Aff. ¶ 42, Encl. E.

**58.** According to Mr. Shabazz's Grievance Report, Mr. Shabazz filed two Informal/Written Complaints in 2018 related to accessible technology in the Deerfield Law Library. However, Mr. Shabazz did not file an accepted Regular Grievance on this issue. DeBerry Aff. ¶ 28, Encl. C.

**59.** According to Mr. Shabazz's Grievance Report, Mr. Shabazz filed two Informal/Written

Complaints about his JPay tablet. DeBerry Aff. ¶ 22, Encl. C. But when Mr. Shabazz attempted to file Regular Grievances on this issue, he failed to attach his Reasonable Accommodation Request form as required by VDOC OP 866.1, and therefore, his Regular Grievances were rejected at intake. Supp. DeBerry Decl. ¶¶ 5-24.

### LEGAL ANALYSIS

#### **I. The Plaintiffs have failed to exhaust their claims that VDOC does not provide accessible library, tablet, and kiosk technologies.**

Under both the federal Prison Litigation Reform Act (“PLRA”), 28 U.S.C. § 1997e, and Virginia Code § 8.01-243.2, an inmate is required to exhaust his administrative remedies pursuant to the prison’s grievance procedure prior to filing any lawsuit. Exhaustion is mandatory, and therefore a plaintiff must exhaust his available administrative remedies before a court can hear his claim. *See Jones v. Bock*, 549 U.S. 199, 211 (2007). Further, to exhaust his administrative remedies, an inmate must complete “the administrative review process in accordance with the applicable procedural rules, including deadlines.” *Woodford v. Ngo*, 548 U.S. 81, 88, 93 (2006); *Moore v. Bennette*, 517 F.3d 717, 725 (4th Cir. 2008). This requirement is one of “proper exhaustion of administrative remedies, which ‘means using all steps that the agency holds out, and doing so properly (so that the agency addresses the issues on the merits).’” *Woodford*, 548 U.S. at 93 (quoting *Pozo v. McCaughtry*, 286 F.3d 1022, 1024 (7th Cir. 2002)).

In this case, all of the Plaintiffs have failed to exhaust their claims that VDOC has not provided them with accessible library, tablet, and kiosk technology.<sup>5</sup> Mr. Courtney and Mr. Stravitz never even took the first step of filing an Informal/Written Complaint about VDOC’s alleged failure to provide with them with accessible library, tablet, and/or kiosk technology. DeBerry Aff.

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<sup>5</sup> As explained in VDOC’s Motion for Summary Judgment, the Plaintiffs have collectively only exhausted five (5) of their claims in this action. (*See* ECF No. 210, 45-46.)

Encl. D; Phillips Decl. Encl. B. Mr. Shaw filed two Informal/Written Complaints about his JPay tablet, but never filed an accepted Regular Grievance on this issue, and never filed any Informal/Written Complaints whatsoever about library and kiosk technology. DeBerry Aff. Encl. B. Mr. Hajacos filed an Informal/Written Complaint and a Regular Grievance about his JPay tablet in December 2023, but never appealed that Regular Grievance to Level II, and he never filed any Informal/Written Complaints about the JPay kiosks or Greensville's library technology. Phillips Decl. ¶ 23 and Phillips Encl. C. Mr. McCann did not file any Informal/Written Complaints about his JPay tablet or accessible technology in the Deerfield libraries. Although Mr. McCann filed an Informal/Written Complaint in October 2022 about the accessibility of the JPay kiosks, he did not file an accepted Regular Grievance on this issue. DeBerry Aff. ¶ 42 and Encl.E. Finally, Mr. Shabazz filed two Informal/Written Complaints in 2018 related to accessible technology in the Deerfield Law Library. However, Mr. Shabazz did not file an accepted Regular Grievance on this issue. DeBerry Aff. ¶ 28 and Encl. C. And, although Mr. Shabazz filed two Informal/Written Complaints about his JPay tablet, when he attempted to file Regular Grievances, he failed to attach his Reasonable Accommodation Request form as required by VDOC OP 866.1, and therefore, his Regular Grievances were rejected at intake. DeBerry Aff. Encl. C.; Supp. DeBerry Decl. ¶¶ 5-24. Mr. Shabazz therefore failed to properly exhaust his administrative remedies as required by the PLRA. *See Newton v. Bowler*, No. 3:22CV122, 2023 WL 8788952, at \*4 (E.D. Va. Dec. 19, 2023) (finding that VDOC inmate failed to properly exhaust his administrative remedies because he failed to attach the necessary documentation to his Regular Grievance).

In all, not one of the Plaintiffs has properly exhausted his claims that VDOC has failed to provide him with accessible JPay tablet, kiosk, or library technology. To the extent that the Plaintiffs may argue that the NFB-VA is eligible for injunctive relief on behalf of the individual

Plaintiffs without the need for the Plaintiffs to first exhaust their claims, this is incorrect. The NFB-VA's members "as prisoners, are bound by the requirements of the PLRA. In short, the Incarcerated Plaintiffs may not avoid the exhaustion requirement simply by forming an organization and then suing in the name of that organization." *Green Haven Prison Preparative Meeting of Religious Soc'y of Friends v. New York State Dep't of Corr. & Cmty. Supervision*, 16 F.4th 67, 82 (2d Cir. 2021). Because none of the individual Plaintiffs have exhausted their claims that VDOC has allegedly failed to provide them with accessible JPay tablet, kiosk, or library technology, on this basis alone, the claims asserted in the Plaintiff's Partial Motion for Summary Judgment are barred under the PLRA and the Virginia Code. As such, they are not entitled to summary judgment on these claims, and instead summary judgment should be granted in favor of the Defendants.

**II. Plaintiffs are not entitled to summary judgment as to their claims that VDOC fails to provide accessible library, tablet, and kiosk technologies or otherwise fails to provide effective communication.**

**a. VDOC provides accessible tablet and kiosk services and effective alternatives for blind and low vision inmates to communicate with friends and family.**

In their Partial Motion for Summary Judgment, the Plaintiffs allege that VDOC fails to provide them with accommodations that would allow them the ability to "communicate with friends and family." (ECF No. 200, at 24-26.) The Plaintiffs argue that because VDOC allegedly fails to provide specific screen-reader and magnification software on JPay tablets and kiosks, the Plaintiffs are "unable to privately and independently communicate with friends and family like sighted prisoners can." (*Id.* at 24.) As an initial matter, there is a dispute of fact as to whether the tablets and kiosks are as inaccessible as Plaintiffs allege. Defendants have submitted evidence showing that JPay tablets are currently equipped with zoom, magnification, and text-to-talk capabilities, inmates can purchase an external keyboard with Braille, and many of the kiosks have Braille keyboards. Welch Decl. ¶¶ 8-11. In fact, in their depositions, both Mr. Stravitz and Mr.

Courtney testified that they've used the JPay tablets and kiosks without a problem. Stravitz Dep. 105:4-24; Stravitz Dep. 173:5-11; Courtney Dep. 177:10-11. Mr. Courtney testified that he had no problem using his JPay tablet because "it comes with accessibility features." Courtney Dep. 177:10-11.

However, even putting aside this dispute of fact, VDOC offers blind and low vision inmates many alternatives to effectively communicate with their friends and family, meeting its obligations under the ADA, RA, and VDA. In its commentary on the ADA's implementing regulations, the Department of Justice has stated that "a public entity 'shall honor the choice' of auxiliary aid or service expressed by the person with disabilities, 'unless it can demonstrate that another effective means of communication exists or that use of the means chosen' would fundamentally alter the program, service, or activity of the public entity at issue, or would create an undue financial or administrative burden." *Paulone v. City of Frederick*, 787 F. Supp. 2d 360, 397 (D. Md. 2011) (citing 28 C.F.R. part 35, App. A). The appropriate consideration therefore is not simply whether the Defendants provided Plaintiffs with the specific auxiliary aid or service they requested, but instead whether they have provided equally effective communication and equal access to VDOC programs and services. *Brown v. Dep't of Pub. Safety & Corr. Services*, 383 F. Supp. 3d 519, 557-58 (D. Md. 2019).

Aside from the JPay tablets and kiosks, VDOC provides other effective alternative means for Plaintiffs to communicate with family and friends, such as through in-person visitation, telephone, TTY phones, and videophones for VDOC inmates. Supp. Shaw Decl. ¶¶ 4-11; Supp. Talbott Decl. ¶¶ 4-11. Although the Plaintiffs presume that JPay "email" messages are the only way in which blind or low vision inmates can communicate with friends and family, this is incorrect. In fact, telephonic and visitation services are a *more* effective form of communication

for blind and low vision inmates than the JPay tablets because, as acknowledged by the Plaintiffs, inmates must sync their JPay ablet to a JPay kiosk to both send and receive messages. (ECF No. 200, ¶¶ 49-50.) The JPay tablets do not provide communication in real time. (*See id.*) On the other hand, telephone, videophone, and in-person visitation provide instantaneous, one-on-one communication with friends and family. VDOC provides a wealth of resources to blind and low vision inmates to communicate with friends and family, and these options are even more effective than the JPay tablets. Because the Defendants' evidence shows that alternative means of communication are made available, the Plaintiffs fail to show that they are entitled to summary judgment with respect to this issue.

**b. The Plaintiffs fail to identify how they have each been denied meaningful access to VDOC's library services.**

Plaintiffs next argue that because VDOC does not provide certain screen-reader and magnification software and “a document scanner that can read printed documents and transform them into digital text on that computer” in the Greenville and Deerfield's libraries, “VDOC denies blind prisoners at Deerfield and Greenville equally effective communications in their library programs.” (ECF No. 200, at 22, 23.) Plaintiff's arguments fail for two reasons. First, not one of the individual Plaintiffs identifies how *he* has been denied effective communication in or meaningful access to the Deerfield or Greenville libraries' programs or computers. This is essential to prevail on any ADA, RD, and VDA claim. And second, the Plaintiffs selectively ignore the many accommodations made available to themselves and other blind and low vision inmates in the Deerfield and Greenville libraries, including screen-reader and narrator capabilities on the Greenville Law Library computers and document reading and magnification machines in both Deerfield libraries. For these reasons, the Plaintiffs are not entitled to summary judgment on their claims that VDOC fails to provide accessible JPay, tablet, and library technology.

***i. The Plaintiffs do not identify how each of them has been denied meaningful access to the Greensville and Deerfield Libraries***

A Plaintiff seeking recovery under either the ADA or RA must demonstrate “that (1) he has a disability; (2) he is otherwise qualified to receive the benefits of a public service, program, or activity; and (3) he was ‘excluded from participation in or denied the benefits of such service, program, or activity, or otherwise discriminated against, on the basis of h[is] disability.’” *Spencer v. Earley*, 278 F. App’x 254, 261 (4th Cir. 2008) (alteration in original) (quoting *Constantine v. George Mason Univ.*, 411 F.3d 474, 498 (4th Cir. 2005)). Exclusion may be demonstrated by showing that the defendants failed to provide an “otherwise qualified plaintiff with disabilities ‘meaningful access’ to the program or services sought.” *Henrietta D. v. Bloomberg*, 331 F.3d 261, 282–83 (2d Cir. 2003) (emphasis added). An “ADA violation exists only if the defendant’s action or inaction prevents the plaintiff from participating in a program, activity or service.” *Holmes v. Godinez*, 311 F.R.D. 177, 226 (N.D. Ill. 2015). “Title II [of the ADA] . . . cannot be read to impose strict liability on public entities that neither caused plaintiffs to be excluded nor discriminated against them.” *Bacon v. City of Richmond*, 475 F.3d 633, 639–40 (4th Cir. 2007).

Here, the Plaintiffs’ Motion for Summary Judgment does not identify how each of the individual Plaintiffs, with his specific vision impairment, has been denied meaningful access to the Deerfield or Greensville Law or Recreational/Educational Library’s services. (See ECF No. 200.) Plaintiffs do not identify which service in any of the libraries each of them has sought to use and was prevented from meaningfully accessing due to VDOC’s failure to accommodate, or how each was prevented from effectively communicating because of this purported failure to accommodate. *Henrietta*, 331 F.3d at 282–83; *Holmes*, 311 F.R.D. at 226.

This is particularly notable as the Plaintiffs have litigated this case by using the term “blind” “in its broad sense, to include people with low-vision and other vision impairments.” (Am.

Compl., ECF No. 136 n.1.) The Plaintiffs claim that they have varying levels blindness and impairment. There are no allegations in this case that Mr. Courtney and Mr. Stravitz cannot read or write independently, so it is unclear why screen-reader software or read-aloud technology was a necessary accommodation for them to access Greenville's library services.

In fact, the record in this case demonstrates that the Plaintiffs either have never sought to utilize any library service at all, or if they did, that they were accommodated. Mr. Hajacos testified that he has never even been to the Greenville Law Library. Hajacos Dep. 104:17-19. And the Greenville Recreational/Educational Librarian has never had a request for any service from a blind or low vision inmate. Shumate Decl. ¶ 12. In the Deerfield Recreational/Educational Library, Mr. Stravitz has been employed in his position as a library aid prior to his cataract surgery, where he has received accommodations, including a magnifying screen for the computer, a dark marker to write with, and bolder and darker labels to identify books. Stravitz Dep. 189:10-24. VDOC cannot be said to have violated the ADA, RA, and VDA rights of the Plaintiffs by failing to provide them with specific assistive technology in libraries that the Plaintiffs have never even sought to use or were otherwise accommodated for its use. *Randolph v. Rodgers*, 170 F.3d 850 (8th Cir. 1999) (explaining that “[p]ublic entities are not required to guess at what accommodations they should provide under” under the ADA and RA).

The only Plaintiff who has brought any specific allegations as to his use of any of the Deerfield or Greenville library services is Mr. Shabazz, who has alleged that his access to the SARA Machine in the Deerfield Law Library is insufficient. (Am. Compl. ¶ 148.) However, Mr. Shabazz utilizes the SARA Machine in the Deerfield Law Library for up to 32 hours every week. Delbridge Dep. 172:1. This level of access is more than sufficient under the ADA, RA, and VDA. *See, e.g., Richardson v. Clarke*, E.D. Va. No. 3:18CV23-HEH, 2021 WL 851881, at \*3 (E.D. Va.

Mar. 5, 2021) (granting summary judgment to VDOC on Deerfield inmate’s RA and ADA claims where inmate had access to American Sign Language interpreter for approximately nine hours per week), *aff’d in relevant part*, 52 F.4th 614 (4th Cir. 2022).

In this case, there are not any allegations, much less evidence, that Mr. Shaw, Mr. McCann, Mr. Courtney, Mr. Hajacos, and Mr. Stravitz ever sought a service from any of the libraries at Deerfield and Greensville and that they were denied an accommodation to allow meaningful participation in that service. To prevail at summary judgment the individual Plaintiffs—each and every one of them—must demonstrate that they have been *excluded from participation in or denied the benefits of such a service, program, or activity*, or otherwise discriminated against, on the basis of their disability. *See, e.g., Constantine*, 411 F.3d at 498. The Plaintiffs fail to foreclose factual dispute as to whether they have been so excluded, and their Partial Motion for Summary Judgment should therefore be denied. *Brown*, 383 F. Supp. 3d at 557 (citation omitted) (explaining that “the type of auxiliary aids required to be provided [to a Plaintiff] involves ‘a fact intensive inquiry often ill-suited for summary judgment”).

***ii. Plaintiffs selectively ignore the availability of accommodations for the Greensville and Deerfield libraries.***

Plaintiffs also fail to demonstrate that the accommodations that are offered in the Greensville and Deerfield libraries are insufficient to access those facilities’ programs and services. First, the nature of the services offered in the libraries are not as expansive as the Plaintiffs imply. The Greensville and Deerfield library computers do not offer the wide range of services that the Plaintiffs allege in their Motion. The Deerfield Recreational/Educational Library computers are of limited use and do not have internet capabilities. Delbridge Dep. 80:7-13; Geist Dep. 20:12; Geist Dep. 55:1-10. These computers house the library catalog and a set collection of documents. Geist Dep. 80:7-13.

Nonetheless, for these limited uses, accommodations are made available to allow access by blind inmates. The electronic catalog of books on Deerfield's Recreational/Educational computers is in large print and includes pictures of the covers of the books available in the library. Geist Dep. 80:16-20. If a blind or visually impaired inmate wishes to access the limited information on the Deerfield Law Library computers, the Deerfield Librarian assists him with accessing the materials such as legislative materials, grants, and course offerings by locating that information for the inmate, and providing it to him in a format accessible to him, whether it be standard or large print. Geist Dep. 44:15-22; 45:1-13; Geist Dep. 49:5-8; 146:10-20; Geist Dep. 147:1-12. Likewise, the computers in the Greensville and Deerfield Law Libraries host Lexis Nexis accounts for inmates and store limited print documents; inmate aids and the Law Librarians help inmates locate and print case law for them. Delbridge Dep. 22:8-14, 66:15-19, 71:13-15; Phillips Dep. 23:22-25:1, 83:1-10, 93:12-16, 96:12-15. And, the computers in the Law Library at Greensville have both a magnification and narrator function. Phillips Dep. 94:7-9; 127:8. The narrator function will read aloud anything that an inmate hovers over on the computer, including information on Lexis Nexis, and the inmate can control the speed of the narration. Phillips Dep. 56:14-20, 57:19-21, 58:1. Further still, the Deerfield Law and Recreational/Education Libraries house a SARA Machine and Merlin Machine for inmates' use. These Machines provide the capabilities to read standard-print documents aloud and provide large magnification on screen. Delbridge Dep. 114:9-12; Geist Dep. 87:6-10. If a visually impaired inmate wishes to read a case or any other document, that case or document can be printed and the inmate can read the case or document on the SARA in the Deerfield Law Library, or with the Merlin Machine in the Deerfield Recreational/Education Library. Delbridge Dep. 72:21-22; 73:1-2; Geist Dep. 49:16-21, 87:6-10.

As explained above, instead of identifying how each of the individual Plaintiffs sought and

has been denied participation in, or meaningful access to, any of the Greenville and Deerfield libraries' services or computers, the Plaintiffs argue that VDOC has an affirmative obligation to provide the specific software and assistive technology in its libraries, and that failing to do so is a violation of the ADA, RA, and VDA. In support of their position, the Plaintiffs cite to three cases: *Pierce v. D.C.*, 128 F. Supp. 3d 250, 271–72 (D.D.C. 2015), *Perez v. Arnone*, 600 Fed. Appx. 20, 22 (2d Cir. 2015), and *Bone v. Univ. of N. Carolina Health Care Sys.*, M.D.N.C. No. 1:18CV994, 2022 WL 138644, at \*2 (M.D.N.C. Jan. 14, 2022). However, none of these cases support the Plaintiffs' position that VDOC has an obligation to provide the Plaintiffs with any specific technology under the RA, ADA, and VDA.

In *Pierce*, the Court found that that the D.C. Department of Corrections had an affirmative obligation to evaluate a “profoundly deaf” inmate for American Sign Language services upon his entry into custody. 128 F. Supp. 3d at 253. The court explained that “during the entire 51–day period in which Pierce was held in custody, no staff person ever assessed Pierce’s need for accommodation or otherwise undertook to determine the type of assistance that he would need to communicate effectively with others during his incarceration.” *Id.* In *Perez*, the Court found that there was a dispute of fact as to whether prison officials had violated the ADA because the Plaintiff had provided evidence that he, *personally*, had been deprived “deprived [] of a computer, word processing programs for the visually impaired, adequate writing tools, envelopes for the blind, and an electronic magnifier.” 600 Fed. App’x 20, 22. And, in *Bone*, again, the Court recommended a finding of an ADA violation where the Plaintiff, *personally*, could not understand the medical documents provided to him because they were not in an accessible format specific to his vision impairment. 2022 WL 138644, at \*60 (listing the ways in which the Plaintiff, “on at least five occasions” was denied assistance in reading medical documents).

*Pierce, Perez, and Bone* do not support the Plaintiffs' position. Collectively, these cases hold that public entities have an underlying duty to provide accommodations for disabled individuals, but that meeting that duty requires a fact-intensive inquiry into what communication or service the individual is seeking and tailoring that accommodation to his or her needs. The record evidence in this case is that VDOC meets that duty. The evidence establishes that VDOC provides an accommodations process and staff dedicated to helping inmates, both disabled and not, with accessing VDOC's programs and services. Talbott Dep. 171:7-174:13. Unit Managers, Counselors, and ADA Coordinators are qualified readers and are available on a daily basis to assist inmates with whatever issue they would like addressed. DeBerry Aff; ¶ 11; Kelly Decl. ¶ 11; Stith Decl. ¶¶ 4-6; D. Turner Aff. ¶¶ 3-7. And, in all of the Greenville and Deerfield libraries, VDOC librarians are available to provide inmates with the resources that they seek in a format that is accessible to them. Delbridge Dep. 22:8-14, 101:12-14; Phillips Dep. 96:18-19; Shumate Decl. ¶¶ 10-11; Geist Dep. 44:15-22, 45:1-13, 49:5-8, 146:10-20, 147:1-12.

Mr. Shabazz exemplifies the accessibility of Deerfield's services. As explained above, he is the only Plaintiff who has sought any library service or program, and Mr. Shabazz has more than adequate access to the Deerfield Law Library's SARA Machine. To the extent that Mr. Shabazz alleges that he requires screen-reader software as an accommodation, he fails to demonstrate why this is so. The Deerfield Law Librarian is available to print any requested materials for Mr. Shabazz, and he may then read those materials on the SARA Machine. Delbridge Dep. 23:22-25:1. Mr. Shabazz has received this exact assistance. Delbridge Dep. 23:22-25:1, 176:17-20. The Deerfield Law Librarian prints legal cases for Mr. Shabazz from Lexis Nexis without watermarks so that those documents may be read aloud to him on the SARA Machine. Delbridge Dep. 176:17-20.

This assistance meets VDOC's obligations under the ADA, RA, and VDA, as the ADA itself specifically permits the services of such a "qualified reader" as an accommodation. 42 U.S.C. § 12103(1). While "[t]he assistance of a third-party reader or scribe will always reduce a parties' 'independence' to some degree and will likely involve some slight invasion of privacy," this does not in itself render such a service inadequate, considering that the ADA expressly permits this as a form of accommodation. *Brown*, 383 F. Supp. 3d at 558. Moreover, to the extent that Mr. Shabazz complains about lack of independence or privacy, "prisons never guarantee privacy or independence to any inmates. Whatever guidance the 'privacy and independence' requirement [on the ADA] offers in other contexts, it cannot be given much weight in prison." *Id.*; see also *Richardson v. Clarke*, 52 F.4th 614, 621 (4th Cir. 2022) (observing that courts "view the reasonableness of accommodations through the lens of operating a prison," and that this "vantage point requires some deference to those who run prisons"). The record demonstrates that Deerfield and Greensville's Law and Recreational/Educational Libraries offer an array of services for inmates to effectively communicate and participate in its programs. The Plaintiffs are therefore not entitled to summary judgment as to these claims.

**c. VDOC's Paper-Based Processes are Accessible**

In their Motion, the Plaintiffs also identify four "paper-based processes" that implicate access to VDOC programs and services: (1) the inmate grievance process, (2) the medical appointment process, (3) the accommodations request process, and (4) the inmate disciplinary process. (ECF No. 200, at 13-15.) To the extent Plaintiffs contend that they are excluded from VDOC programs and services because these processes are not accessible, they have failed to show an absence of disputed facts, and thus are not entitled to summary judgment on this issue.

As an initial matter, many of these processes incorporate alternative forms of communication and do not rely strictly upon written documents. Accommodations may be requested from the facility ADA Coordinators verbally or be made through third parties. Talbott Dep. 171:7-174:13. Likewise, the inmate disciplinary process provides that charges be read aloud to inmates at the time they are served, makes available advisors to provide assistance, and culminates with a live hearing in which the disposition of the charge is announced verbally. Stapleton Dep. 20:2-14, 22:9-20, 24:11-26:18. Even to the extent written documents are needed, staff make themselves available to offer assistance with reading and filling out paperwork, including grievance forms and medical requests. DeBerry Aff; ¶ 11 Kelly Decl. ¶ 11; Stith Decl. ¶¶ 4-14; D. Turner Aff. ¶¶ 3-6; L. Shaw Suppl. Decl. ¶¶ 12-15; Talbott Suppl. Decl. ¶¶ 12-15. This includes the ADA Coordinators, who make rounds twice per month, as well as other staff who make daily rounds. L. Shaw Suppl. Decl. ¶¶ 12-15; Talbott Suppl. Decl. ¶¶ 12-15. These staff serve as qualified readers and scribes, 42 U.S.C. § 12103(1), and thus are available as an accommodation for accessing VDOC documents, even if the individual Plaintiffs do not always choose to avail themselves of these services. At the very least, the availability of staff to assist with paper-based processes raises a genuine dispute of fact as to this issue that precludes entry of summary judgment for the Plaintiffs. *See Brown*, 383 F. Supp. 3d at 558-59 (denying the plaintiffs' motion for summary judgment where defendants had produced evidence showing that staff and inmate assistants could serve as qualified readers).

Moreover, the record demonstrates that the Plaintiffs themselves utilize VDOC's paper-based processes. For instance, the grievance history of the Plaintiffs shows that each of the Plaintiffs has submitted numerous Informal/Written Complaints, Regular Grievances, and grievance appeals during their time in VDOC custody. *See DeBerry Aff.* ¶ 17, Encl. B (60 of such

filings submitted by Mr. Shaw); *id.* ¶ 29, Encl. C (155 of such filings submitted by Mr. Shabazz); *id.* ¶ 31, Encl. D (28 of such filings submitted by Mr. Stravitz); *id.* Encl. E (190 of such filings submitted by Mr. McCann); Phillips Decl. ¶ 18, Encl. B (67 of such filings submitted by Mr. Courtney); *id.* ¶ 26, Encl. C (175 of such filings submitted by Mr. Hajacos). The record also contains examples of written accommodation requests submitted by the Plaintiffs. *See, e.g.*, Pl.’s Exs. 29-31, 34, 46; L. Shaw Decl. Encls. B-C. In light of the evidence of record showing that the Plaintiffs can, and frequently do, submit written documents to VDOC officials, no reasonable jury could find that VDOC’s paper-based processes are inaccessible to them. *See Richardson*, 52 F.4th at 621 (finding that the record of the plaintiff’s *pro se* legal filings, along with evidence of messages he sent through the JPay system, demonstrated that plaintiff’s vision impairment was being accommodated and supported entry of summary judgment for the defendants).

### **III. Mr. Stravitz and Mr. Courtney’s claims for injunctive relief are moot.**

Finally, Mr. Stravitz and Mr. Courtney’s claims for prospective injunctive relief are moot. “The case-or-controversy requirement [of Article III] applies to all stages of a federal case.” *Williams v. Ozmint*, 716 F.3d 801, 808 (4th Cir. 2013) (citing *Lewis v. Cont’l Bank Corp.*, 494 U.S. 472, 477–79 (1990)). “A case becomes moot ‘when the issues presented are no longer “live” or the parties lack a legally cognizable interest in the outcome.’” *Id.* at 809. (citing *Powell v. McCormack*, 395 U.S. 486, 496 (1969)).

As acknowledged by the Plaintiffs, Mr. Courtney has been released from VDOC custody. (ECF No. 200, ¶ 4.) “[A]s a general rule, a prisoner’s transfer or release from a particular prison moots his claims for injunctive and declaratory relief with respect to his incarceration there.” *Rendelman v. Rouse*, 569 F.3d 182, 186 (4th Cir. 2009). Because Mr. Courtney is no longer in VDOC custody, his claims for prospective relief are moot. Further, Mr. Stravitz underwent



**CERFIFICATE OF SERVICE**

I hereby certify that on the 8th day of March, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing (“NEF”) to all counsel of record.

/s/ Timothy E. Davis  
Timothy E. Davis, VSB #87448  
Assistant Attorney General