



People With Disabilities Foundation

**PWDF Press Release: Social Security Administration Agrees to
Unprecedented Settlement Regarding Discrimination Against
Mentally/Developmentally Disabled Individuals**

News and Press Releases

Social Security Administration Agrees to Unprecedented Settlement re Discrimination Against Mentally/Developmentally Disabled Individuals

San Francisco, California – June 19, 2012 – People with Disabilities Foundation (PWDF) has reached an unprecedented settlement with the Social Security Administration (SSA) in two cases alleging discrimination against mentally/developmentally disabled individuals, under Section 504 of the Rehabilitation Act of 1973 (Section 504) which, unlike the ADA, applies to federal agencies; Terrence Davis v. Michael Astrue, Case No. 3:06-CV-6108 EMC (NC) and John Doe v. Michael Astrue, Case No. 3:09-CV-980 EMC (NC). After 5 years of litigation the parties have filed a final settlement agreement in U.S. District Court, that has been approved by Honorable Edward M. Chen

Plaintiffs Davis and Doe argued that the SSA continually, over the course of many years, discriminated against them by failing to effectively communicate regarding complex SSA rules. Both clients had their social security benefits terminated and or reduced to zero, but were not informed in a manner in which they could understand and respond, due to their psychiatric and/or developmental disabilities. Their impairments include chronic schizophrenia, cognitive and intellectual challenges, severe anxiety, depression, autism and functional illiteracy.

The settlement agreement affords reasonable accommodations so Plaintiffs can have equal meaningful access to the SSA's disability programs under Title II (SSDI) and Title XVI (SSI) of the Social Security Act. The accommodations include training for SSA field office employees and alternate communication methods with plaintiffs to comply with Section 504, which requires that all government agencies must ensure effective communication with disabled individuals.

“This is a major step for human and civil rights for people who have mental and/or developmental disabilities,” says PWDF’s legal director, Steven Bruce. Bruce also notes, “There have been numerous cases on behalf of people with physical disabilities, but it is our belief that this is the first time that, as a result of legal action, any federal agency has agreed to provide reasonable accommodations to individuals with mental or developmental disabilities, to allow equal, meaningful program access. Although these two cases are not class actions, they will have a greater impact beyond the individual plaintiffs, bringing awareness to the issue and

ideally paving the way for millions of other mentally and developmentally disabled Americans to actually receive the equal, meaningful access to which they are entitled under the law.”

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People With Disabilities Foundation

**Stipulation for Compromise Settlement: Terrence Davis
v. Michael Astrue, Case No. 3:06-CV-6108 EMC (NC)
and John Doe v. Michael Astrue, Case No. 3:09-CV-980
EMC (NC)**

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12 Attorneys for Plaintiff

13 UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA
 15 SAN FRANCISCO DIVISION

16 TERRENCE DAVIS,
 17 Plaintiff,
 18 v.
 19 MICHAEL J. ASTRUE, Commissioner of
 20 the Social Security Administration,
 21 Defendant.

No. C 06-6108 EMC (NC) & No. C 09-980 EMC (NC)

STIPULATION FOR COMPROMISE SETTLEMENT AND RELEASES: [PROPOSED] ORDER OF DISMISSAL

22
 23 JOHN DOE,
 24 Plaintiff,
 25 v.
 26 MICHAEL J. ASTRUE, Commissioner of
 27 the Social Security Administration,
 28 Defendant.

1 WHEREAS Plaintiff Terrence Davis ("Davis") filed a Fourth Amended Complaint on
2 February 19, 2009, in U.S. Northern District of California, Case No. C 06-6108 EMC (NC), ECF
3 No. 86 ("Davis Complaint"). In his Complaint, Davis asserts that the Social Security
4 Administration ("SSA") has violated and continues to violate his rights under Section 504 of the
5 Rehabilitation Act of 1973, 29 U.S.C. § 794 ("Section 504"), by failing to provide him the ability
6 to meaningfully participate in SSA's post-entitlement proceedings with respect to his benefits
7 and payments under Titles II and XVI of the Social Security Act, 42 U.S.C. §§ 301 *et seq.* In this
8 pleading and in his discovery responses, Plaintiff Davis specifically identified, among other
9 things, alleged violations of Section 504 and SSA's implementing regulations with respect to
10 SSA's oral communications and written communications with Plaintiff Davis. In this pleading,
11 Plaintiff Davis has also alleged violations by SSA of the Freedom of Information Act, 5 U.S.C. §
12 552 ("FOIA");

13 WHEREAS Plaintiff John Doe ("Doe") filed a First Amended Complaint on September
14 17, 2009, in U.S. Northern District of California, Case No. C 09-980 EMC (NC), ECF No. 32
15 ("Doe Complaint"), asserting that the Social Security Administration violated and continues to
16 violate his rights under Section 504 by failing to provide him the ability to meaningfully
17 participate in SSA's post-entitlement proceedings with respect to his benefits under Title II of the
18 Social Security Act and SSA's post-eligibility proceedings with respect to his payments under
19 Title XVI of the Social Security Act. In this pleading and in his discovery responses, Plaintiff
20 Doe specifically identified, among other things, alleged violations of Section 504 and SSA's
21 implementing regulations with respect to SSA's oral communications and written
22 communications with Plaintiff Doe. Plaintiff Doe has also alleged violations by SSA of his due
23 process rights under the Due Process Clause of the Fifth Amendment, U.S. Const. amend. V
24 ("Due Process Clause") based on the same factual predicate;

25 WHEREAS in a Federal Register Notice dated November 5, 2010, SSA stated that it was
26 "conducting a self-evaluation of our policies and practices to ensure that they comply with
27 section 504 and 45 CFR part 85," but this self-evaluation has not yet been completed. SSA's
28 self-evaluation is not designed to address any particular individual's claims, but instead is

1 designed to evaluate, and recommend any appropriate changes, to SSA's policies and practices
2 so that in the future SSA will ensure that it complies with Section 504 and 45 CFR part 85.

3 WHEREAS Defendant Michael J. Astrue, Commissioner of SSA, denies the allegations
4 in the Davis Complaint and the Doe Complaint, and by entering into this Stipulation for
5 Compromise Settlement and Releases ("Settlement Agreement"), does not admit liability to any
6 of the allegations in Plaintiffs' Complaints filed in these actions. SSA, Plaintiff Davis, and
7 Plaintiff Doe ("the Parties") hereby enter into this Settlement Agreement for the purpose of
8 resolving all of Plaintiffs' claims without the need for further protracted litigation and without
9 the admission of any liability.;

10 WHEREFORE, the Parties hereby agree to the terms of this Settlement Agreement,
11 which provides as follows:

12 1. **Dismissal With Prejudice and Plaintiffs' Releases:** In consideration of the representations,
13 promises, and agreements set forth herein, the sufficiency of which is hereby acknowledged,
14 Plaintiffs Davis and Doe agree that by signing this Settlement Agreement they withdraw and
15 dismiss with prejudice the lawsuits entitled *Terrence Davis v. Michael J. Astrue*, No. C 06-6108
16 and *John Doe v. Michael J. Astrue*, No. C 09-980 ("the Actions") and further agree, on their own
17 behalf and on behalf of their representatives, assignees, heirs, executors, family members,
18 beneficiaries, administrators, successors, and anyone acting, or claiming to act on their behalf, to
19 hereby release and forever discharge SSA and its past and present commissioners, employees,
20 agents, officials, contractors, and their representatives, from any and all claims and causes of
21 action, known and unknown, asserted and unasserted, direct and indirect, and of any kind, nature
22 or description whatsoever, arising out of the facts underlying the Actions. (SSA and its past and
23 present commissioners, employees, agents, officials, contractors, and their representatives are
24 defined as "the Released Parties"). Plaintiffs Davis and Doe shall forever be barred and
25 enjoined from bringing or prosecuting any claim against any of the Released Parties unless it falls
26 outside the scope of this release.

27 2. **Plaintiffs' Section 1542 Release:** The provisions of California Civil Code Section 1542 are
28 set forth below:

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“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

Plaintiffs Davis and Doe, having been apprised of the statutory language of Civil Code Section 1542 by an attorney of their choosing, and fully understanding the same, nevertheless elect to waive the benefits of any and all rights they may have pursuant to the provision of that statute. Plaintiffs Davis and Doe understand that, if the facts concerning injuries or liability for relief pertaining thereto are found hereinafter to be other than or different from the facts now believed by either or both of them to be true, this Settlement Agreement shall be and remain effective notwithstanding such material difference.

3. **Limitations On Scope of Release:** The release contained in Paragraphs 1 and 2, above, does not release, and shall not be construed to release, (1) any of Plaintiffs’ currently pending or future proceeding under SSA’s administrative review process set forth in 20 C.F.R. §§ 404.900 & 416.1400 or (2) Plaintiffs’ eligibility for benefits or payments from SSA.

4. **Provisions to Assist Plaintiffs.** In consideration of the dismissal with prejudice and releases in Paragraphs 1 and 2 of this Settlement Agreement, and limited by Paragraph 3, SSA agrees to the following terms with respect to Plaintiffs Davis and Doe.

a. SSA shall assign employees of the SSA with expertise in the Title II program, Title XVI program, or both programs, to assist each of the Plaintiffs as follows (In this agreement such an employee is referred to as an “Assigned [Title II or Title XVI] [Backup] program expert.”):

i. SSA will assign to Plaintiff Davis a Title II program expert as his primary contact and an backup Title II program expert to assist him respecting Title II. These Assigned program experts shall work in the San Francisco Downtown Field Office 950, currently located at 90 Seventh Street, Annex First Floor, San Francisco, California 94103. These Assigned program experts will be available to meet with the professional of Plaintiffs’ choice for up to three (3) hours, which is further described below in Paragraph 4.a.vi.

1 ii. SSA will assign to Plaintiff Doe two (2) program experts and two (2)
2 backup assigned program experts to assist him as follows: (1) a primary contact Assigned Title II
3 program expert and Assigned Backup Title II program expert to assist him respecting Title II;
4 and a primary contact Assigned program expert and Backup Assigned program expert to assist
5 him respecting Title XVI. These Assigned program experts and Backup Assigned program
6 experts shall work in the San Francisco Mission Field Office 781, currently located at 1098
7 Valencia Street, San Francisco, California 94110. These Assigned program experts and Backup
8 Assigned program experts will be available to meet with the professional of Plaintiffs' choice for
9 up to three (3) hours, which is further described below in Paragraph 4.a.vi.

10 iii. Within five (5) business days of the Effective Date of this Settlement
11 Agreement, if not before, SSA will provide Plaintiffs with the name and direct telephone number
12 of each of the Assigned program experts and Backup Assigned program experts.

13 iv. Each Plaintiff shall be entitled to meet with his Assigned program
14 expert(s) from time to time to discuss SSA's written or oral communications with that Plaintiff
15 and to discuss relevant aspects of Title II and/or Title XVI. The Assigned program experts will
16 be responsible for: 1) explaining SSA's communications with each Plaintiff and relevant aspects
17 of Title II and/or Title XVI programs, such as work incentives; 2) providing assistance to each
18 Plaintiff in responding to SSA's communications, including notices, letters, questionnaires, and
19 other forms; and 3) preparing written summaries for each Plaintiff regarding the substance of the
20 meeting between Plaintiff and the Assigned program expert(s) to the extent (a) any requests for
21 further information or action by Plaintiff is requested at the meeting or (b) if Plaintiff requests
22 such a written summary during the meeting. Summaries prepared pursuant to this provision shall
23 be written in clear, concise language and shall, to the extent possible, score no higher than a sixth
24 to eighth grade reading level using the readability test referenced in the current POMS NL
25 00610.020. The Assigned program expert shall mail to the Plaintiff the summary within two (2)
26 business days after the day the meeting being summarized has been held. The Backup Assigned
27 program experts shall be responsible for performing these responsibilities when the Assigned
28 program expert is not available.

1 v. If a Plaintiff visits the Field Office without a prior appointment, the
2 primary Assigned program expert will make reasonable efforts to meet with the Plaintiff that day.
3 If the relevant primary Assigned program expert is not available, the Backup Assigned program
4 expert will make reasonable efforts to meet with the Plaintiff that day. If neither the primary nor
5 backup Assigned program expert is available, SSA will direct its staff to set up an appointment
6 with the primary Assigned program expert as soon as practical. If the primary Assigned program
7 expert will not be available for an extended period of time, the appointment shall be made with
8 the Backup Assigned program expert. This directive will be accomplished via the flag message
9 created pursuant to Paragraph 4.b, below.

10 vi. Each Assigned program expert and Backup Assigned program expert shall
11 be available to meet with the professional(s) (e.g., therapists, independent living skills trainers)
12 and/or family members of the relevant Plaintiff's choice for a single meeting of up to three (3)
13 hours in length, with the date of the meeting to be agreed upon by the parties. These
14 professional(s) may provide (1) information about the relevant Plaintiff's mental impairments,
15 limitations, and/or symptoms, and (2) recommendations as to techniques that will assist in
16 effective communication with the relevant Plaintiff.

17 vii. The parties anticipate that, at some future time, one (1) or more of the
18 Assigned program experts or Backup Assigned program experts may be unable to fulfill his/her
19 responsibilities under this Settlement Agreement. For example, the Assigned program expert
20 may retire or may be promoted to a different position; alternatively, one or more of the Plaintiffs
21 may move. In this event, SSA shall assign new Assigned program expert(s) or Backup Assigned
22 program experts and shall be available to meet with the professional of the relevant Plaintiff's
23 choice in accordance with Paragraph 4.a.vi. above. If the Backup Assigned program expert
24 becomes the Assigned program expert, this meeting will not be required.

25 viii. If, at some juncture, Plaintiff Davis becomes eligible to receive Title XVI
26 benefits, SSA shall assign a primary Title XVI Assigned program expert and Title XVI Backup
27 Assigned program expert to Davis, with the duties and responsibilities set forth above. SSA shall
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1 comply with Paragraph 4.a.vi above and shall modify its flag messages in accordance with
2 Paragraph 4.b below.

3 ix. Should a Plaintiff fail to meet a deadline for reasons related to his mental
4 impairment, a good cause waiver shall be liberally granted consistent with agency policy.

5 b. SSA shall include in the Visitor Intake Process ("VIP") Computer System
6 a flag message that will appear whenever Plaintiffs check in at a VIP terminal, which is required
7 for every visitor to any field office. This message shall state: "[Mr. Davis or Mr. Doe] is to
8 receive special handling. Please review the MBR message for details."

9 i. SSA shall include in the Master Beneficiary Record ("MBR") and the
10 Disability Control File ("DCF") the following message for Plaintiff Davis: "Due to mental
11 impairments affecting his ability to communicate and per court order, you should not engage in
12 substantive discussions with Mr. Davis. Instead, contact primary Assigned program expert
13 [name] or Backup Assigned program expert [name]. If neither is available, set up an
14 appointment time for Mr. Davis to meet with [name of primary Assigned program expert] within
15 the next week. Provide Mr. Davis with a written document reflecting the appointment date and
16 time."

17 ii. SSA shall include in the MBR and the DCF the following message for
18 Plaintiff Doe: "Due to mental impairments affecting his ability to communicate and per court
19 order, you should not engage in substantive discussions with Mr. Doe. If Mr. Doe's visit relates
20 to Title II, contact primary Title II Assigned program expert [name] or Title II Backup Assigned
21 program expert [name]. If the matter concerns Title XVI, contact primary Title XVI Assigned
22 program expert [name] or Title XVI Backup Assigned program expert [name]. If the relevant
23 staff are not available, set up an appointment time for Mr. Doe to meet with the applicable
24 primary Assigned program expert within the next week. Provide Mr. Doe with a written
25 document reflecting the appointment date and time."

26 iii. SSA shall create one (1) or more flag messages in the applicable Title II
27 and Title XVI computer systems to direct staff responsible for generating written
28 communications to Plaintiffs to include in any such communication whenever possible language

1 identifying the primary and backup Assigned program experts relevant to that written
2 communication.

3 iv. Should the agency cease using any of the computer systems reference in
4 paragraph 4(b), these messages shall be added to the relevant computer system to the extent
5 possible.

6 c. SSA will cause notices to Plaintiffs to include an audio CD of the notice in
7 addition to the written form of the notice. Audio CDs shall not be provided as to the summaries
8 described in paragraph 4.a.iv.

9 d. SSA will begin implementation of its obligations under Paragraph 4.a.vi, 4.b, and
10 4.c within ninety (90) days after the Effective Date of this Settlement Agreement.

11 5. Attorneys Fees and Costs. The parties agree that they will bear their own fees and costs with
12 respect to Plaintiff Davis's FOIA claim and Plaintiff Doe's Due Process claim. In order to
13 resolve Plaintiffs' claims under Section 504 of the Rehabilitation Act of 1973, SSA will cause
14 the sum of Nine Hundred Thousand Dollars and No Cents (\$900,000.00) to be paid to Plaintiffs'
15 counsel in full settlement for any and all attorneys' fees and costs claimed by Plaintiffs. Payment
16 will be made by wire transfer or other electronic means to a bank account to be designated in
17 writing by Plaintiffs' counsel. Plaintiffs' counsel agrees to provide Defendant's counsel with
18 information necessary to process the payment, such as Tax I.D. and banking information, within
19 five business after the Effective Date of this Settlement Agreement.

20 6. Effective Date and Term. The terms of this Settlement Agreement shall become effective
21 upon the date the Court enters the [proposed] Order in this Settlement Agreement (the "Effective
22 Date"). SSA's obligation to comply with Paragraph 4 of this Settlement Agreement will remain
23 in effect until April 30, 2026 for Plaintiff Davis and until June 30, 2033 for Plaintiff Doe. SSA's
24 obligation to comply with Paragraph 4 of this Settlement Agreement will cease to be in effect
25 with regard to Plaintiff Doe if he subsequently sues any of the Released Parties to seek
26 declaratory or injunctive relief that differs from the provisions of Paragraph 4 of this Settlement
27 Agreement, except to the extent such relief relates to physical limitations. SSA's obligation to
28 comply with Paragraph 4 of this Settlement Agreement will cease to be in effect with regard to

1 Plaintiff Davis if he subsequently sues any of the Released Parties to seek declaratory or
2 injunctive relief that differs from the provisions of Paragraph 4 of this Settlement Agreement,
3 except to the extent such relief relates to physical limitations.

4 7. No Admissions and No Use of Deposition Testimony. The Settlement Agreement is the
5 result of compromise and settlement and does not represent an admission by any party to any
6 fact, claim, or defense in any issue in this lawsuit. The Settlement Agreement has no
7 precedential value and shall not be cited in any other litigation except as necessary to enforce the
8 terms of the Agreement as provided for in paragraph 16. The Parties agree that they will not use
9 any deposition testimony from these Actions, except that Plaintiffs may use the deposition
10 transcripts of their employers and treatment providers in any of Plaintiffs' currently pending or
11 future proceeding under SSA's administrative review process set forth in 20 C.F.R. §§ 404.900 &
12 416.1400.

13 8. Entire Settlement Agreement. The Settlement Agreement represents the entirety of the
14 Parties' commitments with regard to settlement. The Parties agree that any other prior or
15 contemporaneous representations or understandings not explicitly contained in this Settlement
16 Agreement, whether written or oral, are of no further legal or equitable force or effect.

17 9. Anti-Deficiency Act. Nothing in this Settlement Agreement shall be interpreted as, or shall
18 constitute, a commitment or requirement that SSA obligate or pay funds, or take any other
19 actions in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341 or any other applicable
20 law.

21 10. Change in Law. A change in controlling law, including but not limited to an amendment to
22 the Social Security Act, that is inconsistent with any term of this Settlement Agreement shall
23 supersede and replace any term of this Settlement Agreement inconsistent with controlling law.
24 If any party believes that a change in controlling law is inconsistent with any term of this
25 Settlement Agreement, that party shall give notice to the other parties pursuant to Paragraph 11
26 of this Settlement Agreement. If the change in controlling law is claimed to be inconsistent with
27 Paragraph 4 of this Settlement Agreement, then the exclusive forum for resolving any dispute
28 about such claims is pursuant to Paragraph 16 of this Settlement Agreement.

1 11. **Notice.** Notice to any party regarding this Settlement Agreement or any of its provisions
2 must be made in writing, must reference this Settlement Agreement and the case numbers of the
3 cases brought by Plaintiffs Doe and Davis, and must be sent by U.S. Mail as set forth in this
4 Paragraph. Any change in the person to whom notice should be given, as well as any change of
5 address, must be sent by the party giving notice to every other party as set forth in this Paragraph,
6 provided, however, that if Steven Bruce gives notice that he no longer represents Plaintiff Davis
7 and/or Plaintiff Doe and no notice has been given of any different representative by form or by
8 letter, SSA will give notice to the most current representative of Plaintiff Davis and/or Plaintiff
9 Doe that is identified in SSA's records.

10 a. Notice to SSA: Regional Chief Counsel, Office of General Counsel, Region IX,
11 160 Spear Street, Suite 800, San Francisco, California 94105, with a copy to: Civil Chief, United
12 States Attorney's Office, Northern District of California, 450 Golden Gate Avenue, Box 36055,
13 San Francisco, California, 94102.

14 b. Notice to Plaintiff Davis: [REDACTED]
15 [REDACTED], with a copy to Steven Bruce, 507 Polk Street, Suite 430, San Francisco,
16 California, 94102.

17 c. Notice to Plaintiff Doe: [REDACTED]
18 with a copy to Steven Bruce, 507 Polk Street, Suite 430, San Francisco, California, 94102.

19 12. **No Further Actions.** Plaintiffs will not file a complaint, administrative action, or civil
20 action against any of the Released Parties with respect to the events underlying these actions or
21 those that occurred prior to the Effective Date of this Settlement Agreement.

22 13. **No Severability.** If any provision of this Settlement Agreement is altered in any way by the
23 Court or determined to be unenforceable by any court, then this Settlement Agreement shall be
24 null and void and have no further effect.

25 14. **Meaningful Access.** Plaintiffs Davis and Doe agree that the terms of this Settlement
26 Agreement provide them with meaningful access under Section 504 to all of SSA's work related
27 matters, programs and benefits and that they do not require any additional accommodations for
28 their disabilities beyond what is set forth in this Settlement Agreement. This paragraph is not

1 intended to apply to any accommodations Plaintiffs may request in the future due to physical
2 limitations arising after the Effective Date of this Settlement Agreement.

3 15. **Modifications.** The parties reserve the right to modify this Settlement Agreement to address
4 circumstances not presently anticipated. Any modification of this Settlement Agreement shall be
5 made in writing and approved by SSA on the one hand, and Mr. Davis and/or Mr. Doe, on the
6 other hand. Court approval of any such written modification shall not be required.

7 16. **Limited Enforcement.** The parties have agreed and request that this Court retain limited
8 jurisdiction to enforce Paragraphs 4 and 5 of this Settlement Agreement, which jurisdiction is
9 limited by the terms of this Paragraph. The procedures and remedies provided in this Paragraph
10 are the exclusive procedures and remedies for alleged violations of this Settlement Agreement.
11 In the event of a claimed breach of Paragraph 4 and/or 5 of this Settlement Agreement, the
12 dissatisfied party shall provide the other party with written notice of the alleged breach and a
13 request for negotiations. The parties shall confer to resolve the alleged breach within sixty (60)
14 days after receipt of the notice, or such time thereafter as is mutually agreed upon. Notices under
15 this Paragraph must be provided in accordance with Paragraph 11 of this Settlement Agreement.

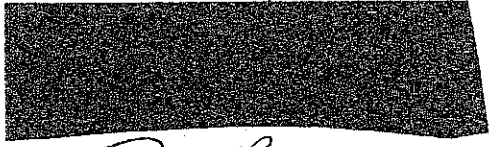
16 The following enforcement provision applies to Plaintiff Davis through July 31, 2021 and
17 applies to Plaintiff Doe through July 31, 2028 so long as this Settlement Agreement has not been
18 rendered null and void or unenforceable: If the parties are unable to resolve the alleged breach
19 within sixty (60) days after they have conferred, or such time thereafter as is mutually agreed
20 upon, then any party may file a letter brief with the appropriate judge as described below, which
21 shall (a) certify that the parties were unable to resolve the alleged breach and (b) briefly identify
22 the nature of the alleged breach. The opposing party shall have ten (10) business days to file a
23 response to the letter brief. After the filing of a letter brief and the response, the appropriate
24 judge shall re-open the dismissed Action(s) for the sole purpose of resolving the alleged breach
25 of Paragraph 4 or 5 of this Settlement Agreement and the appropriate judge shall have the full
26 authority and the sole authority to judicially resolve this issue. The appropriate judge's authority
27 notwithstanding, the parties waive any right any of them might have to seek (a) any remedy other
28 than an order compelling compliance with Paragraph 4 or 5 of this Settlement Agreement and/or

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(b) sanctions, contempt, and/or any other relief of a punitive or monetary nature. The appropriate judge shall be Elizabeth D. Laporte; should Judge Laporte cease to be a judge for the United States District Court, Northern District of California, then the appropriate judge shall be Edward M. Chen; should Judge Chen cease to be a judge for the United States District Court, Northern District of California, then the appropriate judge shall be an Article III judge assigned by the proper official at the United States District Court, Northern District of California.

17. **Authorization.** The parties certify that each is fully authorized to agree to the terms and conditions of the Settlement Agreement and to legally bind such parties to it.

Dated: June 18, 2012



Dated: June 18, 2012

Plaintiff Terrence Davis

Dated: June 18, 2012

STEVEN E. BRUCE
Attorney for Plaintiffs

Dated: June 15, 2012

DAVID RUST
Social Security Administration
Deputy Commissioner for Retirement and Disability Policy

Dated: June 18, 2012

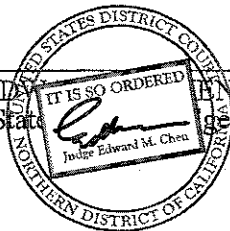
MELINDA HAAG
United States Attorney

MICHAEL T. PYLE
Assistant United States Attorney
Counsel for Defendant

PURSUANT TO STIPULATION, IT IS SO ORDERED:

DATED: 6/19/12, 2012

HON. EDWARD M. CHEN
United States District Court





People With Disabilities Foundation

**PWDF Comments to the Federal Register (Dec. 2013)
Regarding the Social Security Administration's
Section 504 Self-Evaluation to Provide Disabled
Individuals with Disabilities Meaningful Access to Social
Security Programs and Activities, Ver. 3.1.**

Prepared by: Steven Bruce, Legal Director, People With Disabilities Foundation. (Expert on medical (psychiatric)- legal. *Davis v. Astrue*, Case No. C 06-6108 EMC (NC) and *Doe v. Astrue*, Case No. C 09-980 EMC (NC).)

These relate to “**Psychological or Emotional**” under “Requesting Accommodations.”

The reasonable accommodations for people with a combination of mental disabilities, primarily consisting of psychosis (schizophrenia) and mood disorders or autism, are too often ignored. Unlike intellectual disabilities, these disabilities cannot be directly measured by psychometric testing; thus, claimants with mental disabilities are too often “screened out” of programs and reasonable accommodations.

To allow equal access to program participation (work reviews, in particular) and give these claimants meaningful accommodations requires individualized assessments. The standard accommodation proposed by the SSA is too non-specific and not based on individualized assessments. The individualized assessments can be derived from the claimants’ initial medical records evaluation on initial application and Continuing Disability Reviews.

A psychiatric study commissioned by the SSA at an initial cost of \$52 million in 2005 entitled the “Mental Health Treatment Study” (MHTS) has produced positive results. Regrettably, MHTS is not mentioned in the SSA Section 504 proposed rules. SSA uses, in its POMS DI 11005.076, “Interviewing People with a Mental Impairment(s),” a communication methodology that is similar for any and all psychological impairments, whether cognitive, mood disorders, anxiety disorders, intellectual disabilities, etc. These disorders are not the same, and individualized assessment is needed and legally required under Section 504. See *Davis v. Astrue, supra*. DDS or an ALJ already performs the individualized assessment.

The proposed rules list cognitive disabilities separately from psychological or emotional disabilities; however, they rely on POMS DI 11005.076, which is not differentiated according to disorder. In fact, the “special interviewing techniques” evidence a serious lack of detail and SSA provides no evidence of subsequent meaningful training to SSA CRs who communicate with the mentally disabled beneficiaries (training is mentioned generally). E.g., POMS DI 11005.076 states under “Schizophrenic, paranoid and other psychotic disorders” (code 2950) that people with these types of disorders are likely to misunderstand, skip through words or view the SSA CRs as untrustworthy. Sometimes this is true and sometimes it is not. The SSA does not go into such detail. Under “Anxiety-related disorders” (code: 3000), the POMS state that when the SSA CRs communicate with these claimants, the claimants may have distractibility, preoccupation, fearfulness, etc. Nothing is stated or explained in the POMS except the same common answer the SSA gives for all mental disabilities: speak slowly, reduce distractions to avoid confusion, and listen to the person in an accepting manner (without defining accepting manner). Under autism (code: 2990), it states the CR should “....reduce distractions. . . ; speak simply, slowly, clearly and calmly; and listen to the person in an accepting manner . . .” Although there is nothing wrong with instructing CRs to speak clearly and slowly and listen to the person in an accepting manner, the fact that the SSA uses the same interviewing techniques with all psychological disorders is clear evidence that they are not using training related to the particular disorder.

Given these similar instructions and lack of specific training, the CR is led to believe that psychosis, bi-polar, autism, PTSD, depression, cognitive, etc., have similar characteristics and communication needs. There is no way to identify the best method of communication or

accommodation. A case in point: SSA performed a yearlong work review for Mr. Davis and at no time during the review did the CR assigned by SSA know that Mr. Davis had schizophrenia. The same is true for Mr. Doe's work review - no assigned CR doing Mr. Doe's work reviews knew what components comprised his disabilities.

In summary, there are no individualized assessments for reasonable accommodations, especially with respect to work incentives, in spite of the fact that they can be easily done by looking at the SSA's own records when the claimants' medical and other information is first processed to find them disabled.

The MHTS study confirms that the largest and fastest growing group in the SSDI program from 1980 through 2010 is beneficiaries with psychiatric disabilities (approximately 28% of total), primarily psychosis, schizophrenia being the most common, and mood disorders, including bi-polar and depression. The study reveals that this population can work with the correct support framework. The results are statistically significant: 60.3% of the study participation group versus 40.2% of the control group were able to engage in competitive employment.

Prepared by: Steven Bruce, Legal Director, People With Disabilities Foundation. (Expert on medical (psychiatric) - legal. *Davis v. Astrue*, Case No. C 06-6108 EMC (NC) and *Doe v. Astrue*, Case No. C 09-980 EMC (NC).)

These comments relate to **“5. Psychological or Emotional,” “2. Cognitive or Learning,” or developmental disabilities and work reviews for Titles II and XVI (also known as earned income eligibility.)**

The SSA must include a process to incorporate medical information about the specific disability and support frameworks in its work reviews for beneficiaries with mental disabilities, including psychiatric and developmental (with or without intellectual /cognitive). Without this information, the CRs cannot properly conduct work reviews and apply work incentive program rules.

SSA’s district/field office employees are not conversant in psychiatric or developmental disabilities because SSA contracts with the 50 states’ Disability Determination Services (DDS) to do all medical analyses. With a work review; however, the SSA field offices perform all of the processes; i.e., they do not contact DDS even though they technically have the option to do so. SSA CRs have never been trained on psychiatric disabilities.

As a result, the CRs doing work cessation reviews do not have medical information on psychiatric disorders when conducting work reviews and cannot analyze Impairment Related Work Expenses (IRWEs), Unsuccessful Work Attempts (UWAs) or Employer Subsidies, all of which must be considered.

Davis, supra, has schizophrenia and severe anxiety. *Doe, supra*, has autism, depression, and intellectual disability. The CRs did not know their disabilities during the work (or earned

income) reviews and consequently are unable to properly apply SSA's work incentive program rules.

When SSA field office staff state "We do not do medical here. DDS, the state agency does that and SSA policy is not to send work reviews to DDS," how are the Field Office CRs supposed to know the symptomatology of the psychiatric disorders to apply the work incentive rules?



People With Disabilities Foundation

**DREDF Comments to the Federal Register (Dec. 2013)
Regarding the Social Security Administration's
Section 504 Self-Evaluation to Provide Disabled
Individuals with Disabilities Meaningful Access to Social
Security Programs and Activities, Ver. 3.1.**

December 23, 2013

SUBMITTED VIA INTERNET ONLY.

Office of Regulations
Social Security Administration
107 Altmeyer Building
6401 Security Boulevard
Baltimore, Maryland 21235-6401

**Re: Section 504 Business Process
Docket No. SSA-2013-0042**

To the Social Security Administration:

We are nonprofit legal services organizations and other groups that advocate for the rights of people with disabilities in public benefits programs.¹ We submit these comments on the Social Security Administration's Proposed Business Process Vision Under the Rehabilitation Act of 1973, published at 78 Fed. Reg. 70088 (Nov. 22, 2013).

Through firsthand experience, individual client representation, legislative and regulatory policy advocacy, and impact litigation, we have seen the ways in which the Social Security Administration's ("SSA's") administration of its programs—in particular its too-frequent failure to provide reasonable accommodations—negatively impacts people with disabilities. We believe that a thorough Section 504 evaluation and a comprehensive Section 504 policy are essential to SSA's ability to afford people with disabilities equal access to its programs and services.

We are pleased that SSA is making progress toward developing policies and procedures to meet its legal obligations and to better serve people with disabilities. However, we have several concerns regarding the *Proposed Section 504 Business Process Vision to Provide Individuals with Disabilities Meaningful Access to Social Security Programs and Activities* ("*Business Process Vision*"). As discussed in greater detail below, the *Business Process Vision* provides too few practical details and is nowhere near being a comprehensive Section 504 enforcement policy; of those policies and procedures that are described, many appear unduly burdensome for people with disabilities; and the document lacks clarity as to whether public comment will be solicited and considered when SSA does promulgate actual policies and procedures for Section 504 compliance.

¹ Contact information for all of the signatories to this letter is listed in Appendix 1.

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Doing disability justice

I. Background

The regulations implementing Section 504 of the Rehabilitation Act of 1973 set forth general prohibitions against discrimination based on disability in federal agencies and federally funded programs. (45 C.F.R. §§ 85 *et seq.*) Section 504 protects all persons who have physical or mental impairments “that substantially [limit] one or more major life activities, [who have] a record of such an impairment, or [who are] regarded as having such an impairment.” (45 C.F.R. § 85.3.) Section 504’s regulations require that agencies must, among other things: a) ensure that affected persons receive notice of their protections against disability discrimination (§ 85.12); b) ensure that “[n]o qualified individual with handicaps shall on the basis of handicap be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency” (§ 85.21(a)); c) make programs readily accessible and useable including making buildings physically accessible (§ 85.41); d) “take appropriate steps to ensure effective communications” (§ 85.51(a)), including provision of “appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, program or activity conducted by the agency” (§ 85.51(a)(1)); and e) afford effective complaint procedures to ensure that the agency complies with its obligations under Section 504 (§ 85.61).

Section 504 requires federal agencies, including SSA, to conduct thorough self-evaluations of their current policies and practices to analyze them for compliance with Section 504. (45 C.F.R. § 85.11.) Where such policies and practices do not meet the requirements of Section 504, the agency must make necessary modifications. As noted in our² December 3, 2010, comments to SSA and our February 24, 2011, letter to Commissioner Astrue, attached to this letter as Appendices 2 and 3, respectively, the Section 504 self-evaluation should examine the impact of *all* agency policies and practices on people with disabilities. In Attachment A to our February 24, 2011, letter, we listed hundreds of SSA policies that we recommend for this review and evaluation process. In Attachment B to the same letter, we provided examples of problems with SSA policies, along with recommended policy modifications. Although SSA has had the Section 504 self-evaluation obligation for nearly two decades, it has yet to complete a comprehensive self-evaluation; Appendix A to the *Business Process Vision*, the description of “Current Business Process,” does not constitute the type of comprehensive analysis contemplated by Section 504’s regulations.

II. Areas of Concern in SSA’s Proposed *Business Process Vision*

A. The *Business Process Vision* Does Not Contain Concrete Policies or Procedures for Ensuring That SSA Is Meeting Its Obligations Under Section 504.

While the *Business Process Vision* is detailed in some areas, such as including relevant hyperlinks and phone numbers, it lacks significant concrete information about actual policies or their implementation. The *Business Process Vision* appears to acknowledge this deficiency; the flow chart on page 6 indicates that SSA will “[d]evelop agency and component Section 504

² Many, but not all, of the signatories to this letter were also signatories to the December 3, 2010, and February 24, 2011, letters referenced above and attached to this letter as Appendices 2 and 3.

policy” *after* the close of this public comment period. The flow chart does not indicate that SSA will solicit additional public comment on the Section 504 policy itself.

1. **Need for More Practical Information Regarding Implementation**

As written, the *Business Process Vision* does not provide people with disabilities, advocates, the public, or SSA staff with a clear picture of how SSA conceives of its Section 504 obligations nor of how it intends to carry out those obligations. Where in SSA’s own rules are its Section 504 obligations embodied? What procedures will field office staff follow when presented with a request for a reasonable accommodation? What can people with disabilities expect of SSA in terms of meeting their disability-related needs? Moreover, what are the mechanisms by which SSA will collect and analyze data concerning when, if, and how standard and nonstandard accommodation requests are met? How will this information be disseminated for public accountability and used to further improve policies and procedures over time? The answers to these central questions are not readily apparent in the *Business Process Vision*.

2. **Need for Additional Opportunities for Public Comment**

Because the documents that have been made available for public comment do not contain concrete policies, SSA has not given the public an adequate opportunity to review, comment on, and participate in the development of its rules regarding Section 504 compliance. For public participation in this process to be meaningful, SSA must make actual policies available for the public’s review and feedback. The *Business Process Vision* contemplates the development of actual policies at a later date, and SSA must make *those* policies available for public review and comment before they are adopted.

B. The *Business Process Vision*’s Policy on Reasonable Accommodations Is Inadequate.

As the *Business Process Vision* notes, providing reasonable accommodations to people with disabilities is essential to ensuring their “right to equal opportunity to participate in, and have meaningful access to, [SSA’s] programs or services.” (p. 6.) While we applaud SSA for taking this step toward developing a comprehensive reasonable accommodation policy, we are concerned with several flaws in SSA’s vision for that policy.

1. **Conceptual Issues**

First, while the *Business Process Vision* does reference Section 504’s definition of disability on page 3, it does not clarify that the definition of disability for purposes of Section 504 is broader and more inclusive than the definition of disability for the purposes of benefits eligibility. It also does not address how SSA plans to screen people to identify disability-related barriers to complying with SSA’s program requirements.³ In our experience, field office staff are often confused about the two different definitions of disability—they do not understand that a disability might meet Section 504’s standard (“substantially limits one or more major life activities”) even if it is not sufficiently severe to qualify someone to receive SSI or Title II benefits on the basis of disability. And they do not understand that someone who receives Title

³ We have not identified any existing SSA policy that addresses these concerns at all.

If retirement benefits may also be entitled to protections under Section 504 on the basis of disability. SSA's policies must make it clear that even people who cannot meet SSA's stringent standards for disability benefits eligibility may still be entitled to reasonable accommodations in the administration of SSA's programs.

Second, the *Business Process Vision* does not adequately acknowledge that an individual with a disability is the person best able to identify the accommodation or accommodations that will best meet their needs. As the HUD/DOJ statement on reasonable accommodations notes: "persons with disabilities typically have the most accurate knowledge about the functional limitations posed by their disability." (*Joint Statement of the Department of Housing and Urban Development and the Department of Justice: Reasonable Accommodations Under the Fair Housing Act* (May 17, 2004) <<http://www.hud.gov/offices/fheo/library/huddojstatement.pdf>>.)⁴ Instead, the *Business Process Vision* suggests that employees should steer individuals who self-identify as having disabilities into standard accommodations. ("When an individual indicates a need for assistance or requests an accommodation, employees will offer the appropriate standard accommodations and enter information about the request in the automated system." [p. 8.] "If individuals requesting the accommodation decline standard accommodations, they must explain why the accommodations offered are insufficient to provide meaningful access to our programs, services, or facilities." [p. 10].) Further, the discussion of nonstandard accommodations implies that the individual with a disability's preferred accommodation will not be given priority over other possible accommodations. ("When an individual with a disability requests an accommodation to communicate effectively with the agency, we must give primary consideration to the individual's request *unless another effective means of communication exists.*" [p. 9.] [emphasis added])

Along the same lines, the *Business Process Vision* does not discuss how SSA staff should help people with disabilities obtain reasonable accommodations when the person with a disability does not affirmatively identify her disability and request an accommodation. How will staff initiate a discussion about reasonable accommodations if the person doesn't take the initiative to request one? How will SSA ensure that staff are sensitive and respectful in their communications with people who appear to have disability-related impairments but who do not self-identify as having a disability?

As it develops its policies for providing reasonable accommodations, SSA should address methods to identify people who may need accommodations and should clarify that the individual's preferred accommodation should be given priority over all other alternate accommodations that SSA might consider, even where those alternate accommodations are, in SSA's view, also effective.

2. Standard Accommodations

The purpose of distinguishing between standard and nonstandard accommodations appears to be the simplification of providing standard accommodations. If such is the case, then we believe the distinction can be useful. For example, if SSA has a list of standard accommodations that

⁴ Although this statement focuses primarily on the Fair Housing Act, its analysis is also applicable to reasonable accommodations under Section 504. See p. 2, fn. 4.

will be automatically granted if requested, such a policy could make it easier for people with disabilities to get their requested accommodations with minimal staff time and effort. If staff know that they must provide certain accommodations upon request without making further inquiries into the need for the accommodation, the nexus between the disability and the accommodation, or the accommodation's reasonableness, then people with disabilities will be more likely to get the help they need without unnecessary hassle or delay.

However, it is unnecessary, confusing, and discriminatory to list accommodations by disability. As structured, the *Business Process Vision's* list of standard accommodation suggests that certain accommodations are only available for people with certain impairments. Such groupings could lead staff to deny a standard accommodation simply because the requestor has a different disability than the one for which the standard accommodation is listed, in turn denying or delaying a presumptively reasonable accommodation that would help the requestor access Social Security's programs and services.

For example, "[h]elp with filling out forms" is listed as a standard accommodation only for people with mobility or physical impairments (although it is also mentioned as an accommodation in Appendix D for a few other types of impairments). (*Business Process Vision*, pp. 8-9, App. D.) Conducting business with SSA routinely requires individuals to complete and submit forms, and it is our experience that many different types of impairments—including a wide range of physical and mental impairments—make it difficult for people with disabilities to complete SSA forms without assistance. "Help filling out forms" should be a standard accommodation regardless of the type of impairment someone has. To make this assistance available as a standard accommodation for some disabilities but not others is likely to have a discriminatory effect on people whose disabilities are excluded from the list of standard accommodations.

Furthermore, there does not appear to be a definitive list of "Standard Accommodations." Until SSA clarifies the scope of its standard accommodations, it is impossible to judge the reasonableness of the standard versus nonstandard accommodations. The distinction is very important because SSA's proposal for processing nonstandard accommodations is very burdensome.

And the *Business Process Vision's* current list of standard accommodations is far too short; it omits some common accommodations. Examples of other accommodations that should be included are:

- Assistance collecting necessary information or documents;⁵
- Providing extensions for missing deadlines;⁶
- Providing accessible alternate formats to individuals who are not able to complete forms in standard print formats;⁷ and

⁵ Procedures for doing so are already found in POMS GN 00301.180.

⁶ The *Business Process Vision* categorizes such an accommodation as a program modification and, thus, a nonstandard accommodation. (p. 7.) However, good cause for late filing is already contemplated in POMS 03101.020, and field offices should be able to authorize late filing for disability-related reasons. Other issues with the proposed process for nonstandard accommodations are discussed below.

⁷ Although the standard accommodations allow SSA to *provide* written information in alternate formats, they do not contemplate allowing people with disabilities to *complete* necessary forms in alternate formats. Furthermore, the

- Home visits and telephonic appointments for individuals who are unable to attend face-to-face meetings at a field office.

This list is not exhaustive, and SSA should solicit additional feedback from advocates and people with disabilities regarding appropriate standard accommodations.

3. Nonstandard Accommodations

The process for providing nonstandard accommodations as described in the *Business Process Vision* is extremely lengthy and burdensome, and it runs contrary to the purpose of the Rehabilitation Act.

First, SSA's contemplation of nonstandard accommodations is vastly overbroad: "[w]hen a disabled individual is unable to access or use an agency program or activity, the individual may request an accommodation he or she believes will provide meaningful access. For the most part, requests for program modifications are 'nonstandard accommodations.'" (78 Fed. Reg. 70088 (Nov. 22, 2013) at 70089.) SSA's recent policy change involving SSN and benefits verifications is a good example of how onerous this notion is. SSA recently announced that, as of February 2014, it will no longer offer Social Security number (SSN) printouts and benefits verification information in its field offices. SSA will only contemplate exceptions based on "dire need". However, people with disabilities may need print verifications from field offices for disability-related reasons. If those reasons or not, in SSA's view, indicative of "dire need," then it appears that a person with a disability would have to go through the nonstandard accommodation process simply to obtain a print verification.

According to the *Business Process Vision*, a person with a disability who is requesting a nonstandard accommodation will have to wait over a month for the accommodation request to be processed by the Center for Section 504 Compliance—regardless of how easy or inexpensive the requested accommodation. Such unnecessary bureaucratic delay would be detrimental to our clients, many of whom rely on access to SSA's benefits programs to afford the basic necessities of life.

One way to circumvent such delays would be to allow field offices to grant nonstandard accommodations and to have them refer nonstandard accommodations to the Center only if the field office determines that there is a legitimate reason within appropriately developed policy criteria to obtain further review before approval. In other words, a nonstandard accommodation could be granted at any level but would have to be processed by the Center before it could be denied.

The *Business Process Vision* suggests that the Center could deny an accommodation based on its creating an undue financial or administrative burden or fundamental alteration to SSA's programs. (p. 11.) However, the *Business Process Vision* provides no guidance on what these

requirement that alternate formats for forms be requested on an as-needed basis discriminates against those who require such an accommodation because the 45-day waiting period interferes with the necessary flow of business conducted with SSA. The accommodations as listed also provide no mechanism to for an individual to obtain an accessible copy of the completed paperwork, making it impossible for such individuals to verify the accuracy of the form or to maintain it for their own records.

nanced and heavily litigated terms mean.⁸ SSA's reasonable accommodation policy must explain these terms. The policy should also clarify that a denial of a reasonable accommodation based on undue burden or fundamental alteration must be based on evidence and cannot be denied simply because the SSA employee processing the request feels that the accommodation is "unreasonable."

The proposed process for SSA decision-making regarding nonstandard accommodations is also inadequate because it does not provide for an interactive process. Under Section 504 and other anti-discrimination laws, if an agency decides to deny a reasonable accommodation, it must engage in an interactive process with the person with a disability to determine whether an alternate accommodation could meet the individual's needs. (See *O'Dell v. Dep't of Pub. Welfare*, 346 F. Supp. 2d 774, 785-786 (W.D. Penn. 2004); see also *HUD/DOJ Statement, supra*, at p. 7.) In contrast, the nonstandard accommodations process described in the *Business Process Vision* provides for flat denials of accommodations. (p. 11.) It neither authorizes an interactive process nor allows a person with a disability to appeal the denial of a reasonable accommodation. As such, it does not comply with Section 504.

C. Communications and Marketing

SSA should provide more information about how it intends to notify people with disabilities of their right to request accommodations. While publication of information on the website will be helpful, many of our clients don't have access to the internet, don't use computers, or can't read. For those individuals, it is essential that information be communicated—in multiple languages—through other formats. For example, SSA could provide more information about the posters it intends to create for its field offices to describe what the posters will say and how they will reach their intended audience.

D. Center for Section 504 Compliance

While we are generally supportive of a unit at SSA developing expertise in Section 504 issues, we are concerned that having Section 504 activities centralized in one location will make those activities less accessible to our clients, who deal primarily with field offices. As discussed above, many of our clients do not use computers and would not benefit from the proposed automated online services. We encourage SSA to give additional thought to how to make the Center effective at its mission rather than simply being an additional layer of bureaucracy for individuals with disabilities

III. Conclusion

Thank you very much for considering these comments on the *Business Process Vision*. If you have any questions or would like to discuss these comments further, please contact Melissa Morris at the Law Foundation of Silicon Valley at (408) 280-2429 or melissam@lawfoundation.org.

⁸ As a practical matter, it is unlikely that many—or any—individual accommodation requests would create an undue financial or administrative burden for an agency with the size, scope, and budget of SSA.

Please notify us when SSA has developed concrete Section 504 policies and make those policies available to us—and to the general public—for review and comment. We look forward to continuing to work with SSA to ensure its compliance with Section 504.

Sincerely,

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Larisa Cummings, Staff Attorney
Disability Rights Education and Defense Fund

Ilsa Branch, Supervising Attorney, Mental Health Advocacy Project
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