



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

Washington, D.C. 20531

June 15, 2012

Nick A. Soulas, Jr.
First Assistant Prosecuting Attorney
Office of the Franklin County Prosecuting Attorney, Civil Division
373 South High Street
Columbus, Ohio 43215-6318

Re: Preliminary Finding of Discrimination
[REDACTED] v. Franklin County Mun. Ct. et al. (10-OCR-0314)

Dear Mr. Soulas:

Thank you for the documentation that you submitted to the Office for Civil Rights (OCR), Office of Justice Programs, U.S. Department of Justice (DOJ) on behalf of your client, the Franklin County Sheriff's Office (FCSO), in connection with the administrative Complaint that [REDACTED] (Complainant) has filed against the FCSO. In his Complaint, the Complainant, who is deaf, alleges that deputies with the FCSO discriminated against him based on disability when they failed to provide him with a sign language interpreter and only allowed him to make one telephone call using a teletypewriter (TTY) during his detention. This letter serves as official notice that the OCR has made a preliminary determination that the FCSO is in violation of Title II of the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12132, and Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and their implementing regulations.

The ADA and Section 504, along with their implementing regulations, prohibit recipients of funding from OJP, the Office of Community Oriented Policing Services (COPS Office), and the Office on Violence Against Women from discriminating against individuals based on disability. At the time of the alleged discrimination, the FCSO received funding from OJP and the COPS Office. Accordingly, the FCSO is subject to the OCR's jurisdiction.

Upon review of the record, the OCR has made a preliminary determination that the evidence submitted by the Complainant and the FCSO supports the Complainant's allegations of disability discrimination by the FCSO. We have explained our preliminary findings below in detail.

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Factual Background

The Complainant alleges the following:

On the evening of Friday, March 12, 2010, the Complainant was arrested by the Groveport Police Department for domestic violence and assault and transported to the Franklin County Corrections Center (FCCC) operated by the FCSO. The FCSO deputies did not provide the Complainant with an interpreter once he arrived at the jail, and the Complainant was very frightened and did not understand why he was there and what the rules and procedures of the jail were, such as mealtimes and safety precautions. After FCSO deputies booked the Complainant into the FCCC, they allowed the Complainant to make a five-minute phone call on a TTY. The FCSO deputies then placed the Complainant in a cell by himself and gave him a flip chart with pictures and words to communicate with the deputies; the pages of this flip chart state, "I need an interpreter," "I need to use the phone," "I want to go to Church," "I want to go to class," "I want to watch TV: Please turn on Closed Caption," "I want to play games," "I want something to drink," "Activity," and "I want something to eat." The Complainant used the flip chart to tell the deputies that he wanted an interpreter and wanted to place a TTY call, but the deputies did not provide the Complainant with a sign language interpreter and did not allow him to make another TTY call.

On the morning of Saturday, March 13, FCSO deputies took the Complainant to the Franklin County Municipal Court for an arraignment hearing. The court did not have a sign language interpreter present. Since an interpreter was not available, the court postponed the arraignment hearing until Monday morning, and the FCSO deputies transported the Complainant back to the FCCC, where he remained detained until the arraignment hearing on Monday morning. Throughout the day on Saturday and Sunday, the Complainant kept using the flip chart to request an interpreter and to use the TTY so that he could call his wife and an attorney, but the FCSO deputies did not provide him with an interpreter or allow him to make a TTY call. The deputies did not provide the Complainant with a pen or pencil to try to communicate via written notes. On Sunday evening, a FCSO deputy notified the Complainant in writing that the TTY was broken. The Complainant states that all hearing inmates at the FCCC are allowed to make unlimited phone calls during their detention, and that since he was not allowed to make a phone call after his initial TTY call on Friday evening, he was unable to make arrangements for his job or his family and to seek legal assistance. The FCSO deputies transported the Complainant to the Franklin County Municipal Court on Monday morning for his arraignment hearing, and an interpreter was present. The judge set bond and the Complainant was released from the FCCC on Monday afternoon.

In the FCSO's April 22, 2011, response to the OCR's Notice of Discrimination Complaint and Data Request (Data Response), the FCSO stated that while it is unable to specifically respond to the Complainant's allegations it has policies in place regarding the provision of services to deaf or hearing impaired inmates and is unaware of employees not following these policies. The FCSO asserted that it does not discriminate against

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inmates based on any unlawful reason and does not deny reasonable accommodations to inmates who have a disability. According to the FCSO's data response, it provides flip charts, a TTY, and sign language interpreting services to deaf or hearing impaired inmates. The FCSO provided the OCR with a copy of a contract that it had in place with Deaf Services Center, Inc. at the time of the Complainant's detention for the provision of sign language interpreting services on a scheduled and emergency¹ basis.² The FCSO also provided invoices that it received from Deaf Services Center, Inc., which demonstrate that Deaf Services Center, Inc. provided sign language interpreting services for a deaf or hard of hearing inmate at the FCCC on ten occasions from January 1, 2009 to April 22, 2011.

In regard to the Complainant's detention and the alleged failure of the FCSO to obtain the services of an interpreter and to allow the Complainant the continued use of the TTY, the FCSO indicated that due to the fact that the Complainant had his criminal record expunged and the length of time that has passed since the Complainant's detention, the FCSO cannot specifically respond to the Complainant's allegations. Subsequent to the FCSO's Data Response, the Franklin County Municipal Court temporarily unsealed the Complainant's criminal record on August 8, 2011; however, during a January 17, 2012, telephone conversation, attorney Denise DePalma of the Office of the Franklin County Prosecuting Attorney told OCR attorney Shelley Langguth that none of the information contained in the FCSO's records pertaining to the Complainant is responsive to the Complainant's specific allegations. According to the FCSO's March 16, 2012, letter responding to the OCR's requests for additional information and clarification, the FCSO cannot locate a complete copy of the Complainant's file to determine whether there is any documentation in his file regarding requests for an interpreter or other auxiliary aids and services. In the FCSO's Data Response, it said that video recordings are recorded over at least every six months, and therefore no recordings exist for the Complainant's March 12-15, 2010, detention.

According to the FCSO's Data Response, it is unable to provide the OCR with information on whether the TTY was broken during the Complainant's detention and when the FCSO took steps to repair the TTY. However, in the FCSO's March 16, 2012, letter to the OCR, it noted that the TTY at the FCCC is currently operational. According to the FCSO's March 16 letter, it allows deaf and hard of hearing inmates to use the TTY to make telephone calls to the same extent it allows hearing inmates to use a telephone. In an April 24, 2012, voicemail message for Ms. Langguth, you indicated that the FCSO's standard procedure is to allow inmates to make one telephone call immediately following the initial booking and processing and then as many telephone calls as they wish once they are placed in population.

¹ According to the contract with Deaf Services Center, Inc., an emergency request is defined as request that provides less than forty-eight hours notice of the need for an interpreter.

² In the FCSO's March 16, 2012, letter responding to the OCR's request for additional information, the FCSO indicated that the FCSO continues to contract with Deaf Services Center, Inc. for interpreting services.

As for training FCSO employees on how to provide services to deaf or hearing impaired inmates, according to the FCSO's March 16 letter, Deaf Services Center, Inc. provided training to employees upon the implementation of the original contract, but the FCSO does not recall the date of that training. The FCSO stated that it relies upon supervisors to train employees hired after that initial training and that it provides employees with copies of relevant policies and procedures, which are discussed below.

FCSO Policies and Procedures Relevant to the Allegations

At the time of the Complainant's March 12-15, 2010, detention, the FCSO had several written policies in place governing services to deaf or hard of hearing inmates. In an April 15, 2006, Memorandum from Chief Deputy Mark J. Barrett to all supervisors with the FCCC, court services, social services, medical liaisons, commissary, and food services, the FCSO explains that it has a contract with Deaf Services Center, Inc. to provide sign language interpreting services on a scheduled and emergency basis to inmates who are deaf or hearing impaired. According to this Memorandum, any time a FCSO employee schedules an interpreter, the employee must submit a written correspondence to jail administration containing the name of the inmate for whom services were needed and the date and time that the service was requested and provided. In a second Memorandum dated April 15, 2006, from the Chief Deputy to all FCCC supervisors, the Chief Deputy instructs supervisors to advise their employees that it is the FCSO's policy that immediately upon admittance to the FCCC, the booking/slating supervisor shall be notified that a deaf inmate has arrived, and that the booking/slating supervisor shall immediately contact Deaf Services Center to request that an interpreter be sent to the jail to assist the inmate with the booking process. The Memorandum instructs employees to note in the inmate's floor card that the inmate is deaf or hearing impaired, and states that all requests by a deaf or hearing impaired inmate for an interpreter or auxiliary aids and services shall be directed to the floor supervisor, who shall generate a written report documenting how the request was handled. The Memorandum notes that requested reasonable accommodations will be provided to afford deaf or hearing impaired inmates equal access to facility programs, services and activities. A third April 15, 2006, Memorandum from the Chief Deputy to all FCCC supervisors states that whenever a deaf or hearing impaired inmate is housed at the FCCC, the booking supervisor shall provide a book of placards to the inmate for the inmate's use.

Legal Analysis

Title II of the ADA provides that "no qualified individual shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132 (2006). In the context of analyzing whether Title II of the ADA applies to state prisons, the United States Supreme Court has held that prisons fall squarely within the definition of a public entity. *Pennsylvania Dep't of Corr. v. Yeskey*, 524 U.S. 206, 210 (1998). Additionally, the Sixth Circuit Court of Appeals has held that

the ADA applies to post-arrest detention at a jail. *Tucker v. State of Tennessee*, 539 F.3d 526, 537 (2008). Similar to the ADA, Section 504 prohibits agencies that receive federal financial assistance from discriminating against otherwise qualified individuals on the basis of a disability in their programs and activities. 29 U.S.C. § 794 (2006). An individual is considered to have a disability under the ADA and Section 504 if the individual has a physical or mental impairment that substantially limits one or more major life activities; has a record of such an impairment; or is regarded as having an impairment. 42 U.S.C. § 12102 (2006); 29 U.S.C. § 705(9)(B) (2006). Since the FCSO is a public entity and is receiving financial assistance from the DOJ, it is subject to the provisions of both the ADA and Section 504.

In accordance with the DOJ's regulations implementing the ADA, to comply with the prohibition against disability discrimination, "[a] public entity shall take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others." 28 C.F.R. § 35.160(a)(1) (2011).³ The DOJ explicitly noted that "correctional facilities and jails must ensure that inmates who are deaf or hard of hearing actually receive the same information provided to other inmates." 28 C.F.R. pt. 35, app. A, at 636 (2011). Additionally, the DOJ's regulations implementing Section 504 state that recipients of federal financial assistance must ensure that communications with their beneficiaries are effectively conveyed to those with hearing impairments. 28 C.F.R. § 42.503(e) (2011).

To ensure effective communication, a public entity must provide appropriate auxiliary aids and services where necessary to afford individuals with disabilities an equal opportunity to participate in, and enjoy the benefits of, a service, program or activity. 28 C.F.R. § 35.160(b)(1) (2011). Auxiliary aids and services includes a variety of services such as qualified interpreters, written materials, the exchange of written notes, assisted listening devices, and text telephones. 28 C.F.R. § 35.104 (2011). The type of auxiliary aid or service necessary to ensure effective communication depends on the method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place. 28 C.F.R. § 35.160(b)(2) (2011). *See also* U.S. Dep't of Justice, *The Americans with Disabilities Act: Title II Technical Assistance Manual Governing State and Local Government Programs and Services*, Section II-7.1000 (Nov. 1993), available at <http://www.ada.gov/taman2.htm> (stating that "[f]actors to be considered in determining whether an interpreter is required include the context in which the communication is taking place, the number of people involved, and the importance of the communication."). While exchange of notes likely will be effective in situations that do not involve substantial conversation, an interpreter should be used when the matter involves greater complexity, such as communications regarding medical history and

³ The DOJ's regulations implementing the ADA explicitly note that the regulations shall not be construed to apply a lesser standard than the standards applied under Section 504 or the regulations issued by federal agencies implementing Section 504. 28 C.F.R. § 35.103(a) (2011). Accordingly, the principles associated with the DOJ's regulations implementing the ADA apply equally to the Complainant's allegations of discrimination under Section 504.

treatment. 28 C.F.R. pt. 35, app.A, at 573 (2011). When a law enforcement officer is engaging in any complex conversation with a deaf or hard of hearing individual whose primary language is sign language, a qualified interpreter is usually needed to ensure effective communication. U.S. Dep't of Justice, *Communicating with People Who Are Deaf or Hard of Hearing: ADA Guide for Law Enforcement Officers* (Jan. 2006), available at <http://www.ada.gov/lawencomm.htm>.

Additionally, an entity shall give primary consideration to the service that is requested by the individual with the disability. 28 C.F.R. § 35.160(b)(2) (2011). Specifically, a public entity shall honor the choice of an individual with a disability unless it can demonstrate that another effective means of communication exists or that the requested means would not be required under 28 C.F.R. § 35.164⁴. 28 C.F.R. pt. 35, app. B, at 681 (2011). The DOJ has indicated that “[d]eference to the request of the individual with a disability is desirable because of the range of disabilities, the variety of auxiliary aids and services, and different circumstances requiring effective communication.” *Id.*

In regard to telephone calls, when an entity offers an applicant, participant, or member of the public the opportunity to make outgoing telephone calls the entity shall make available, upon request, TTYs or equally effective telecommunications systems for the use of deaf or hard of hearing inmates. 28 C.F.R. § 35.161(a) (2011). A TTY or telecommunications device for the deaf must be made available to deaf inmates under the same terms and conditions as telephone privileges offered to all inmates. U.S. Dep't of Justice, *Commonly Asked Questions About the Americans with Disabilities Act and Law Enforcement*, Section III.16 (Apr. 2006), available at http://www.ada.gov/q%26a_law.htm.

Based on the documentation before the OCR, we have determined that the evidence indicates that the FCSO failed to follow its own policies and procedures and violated the ADA and Section 504 and their implementing regulations when it failed to provide the Complainant with an interpreter during the booking process and failed to ensure that the Complainant could make outgoing telephone calls to the same extent as hearing inmates. As discussed above, a public entity must provide appropriate auxiliary aids and services to ensure that individuals with a disability have an equal opportunity to participate in a service, program, or activity, and shall give primary consideration to the type of aid of service requested by the individual. When a law enforcement officer is engaging in any complex conversation with a deaf or hard of hearing individual whose primary language is sign language, a qualified interpreter is usually necessary to ensure effective communication. Communication between detention facility staff and an inmate during the intake and booking process involves very critical and complex information, such as information regarding any medical conditions and needs that the inmate may have and information regarding the rules, policies, and services of the facility. The FCSO's own procedures require the booking supervisor to immediately contact an interpreter with

⁴ 28 C.F.R. § 35.164 (2011) states that a public entity is not required to take any action that it can demonstrate would result in a fundamental alteration in the nature of the service, program, or activity or in undue financial and administrative burdens.

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Deaf Services Center, Inc. to request an interpreter when a deaf or hearing impaired inmate is brought to the FCCC. However, the evidence indicates that the FCSO failed to follow its procedures and provide the Complainant with an interpreter to assist him with the booking process and to explain the rules of the facility, and as a result the Complainant did not understand what he was doing there and what the rules and procedures were. The Complainant used the placards provided by the FCSO to request an interpreter, but the FCSO failed to honor this request.

The FCSO has been unable to provide any information regarding whether it made any attempt to follow its standard procedures and contact Deaf Services Center, Inc. to request an interpreter, and, if not, why it failed to do so. Additionally, due to the fact that the FCSO states that it cannot locate a complete copy of the Complainant's file, it is unclear whether the FCSO deputies followed its policies and procedures and documented the Complainant's requests for auxiliary aids and services. Based on the foregoing, it appears that the FCSO failed to take appropriate steps to ensure that its communications with the Complainant in connection with the intake and booking process was as effective with its communications with hearing inmates, and as a result the Complainant was denied critical services. As for routine communication that did not involve complex or sensitive information between the FCCC staff and the Complainant during the remainder of his incarceration, it appears that the use of placards to communicate with the Complainant was sufficient to ensure effective communication.

As for the Complainant's limited access to the TTY to make outgoing telephone calls, the FCSO has been unable to explain why the FCSO provided the Complainant with only one opportunity to use the TTY upon his arrival at the FCCC. The FCSO has also been unable to provide any information regarding whether the TTY was indeed broken during the remainder of the Complainant's detention and whether and when it took any steps to fix the TTY. The DOJ's regulations implementing the ADA require entities to provide TTYs or equally effective telecommunications systems to deaf or hard of hearing inmates to ensure that they have the opportunity to make outgoing phone calls to the same extent as hearing inmates. Even if the TTY was not operational during the remainder of the Complainant's detention and the FCSO was unable to immediately repair it, the evidence indicates that the FCSO did not make any attempt to ensure that the Complainant was able to make outgoing telephone calls, such by having the Complainant write down his communications and a deputy calling his wife, who is hearing, to relay this communication. As hearing inmates are allowed to make an unlimited number of phone calls during their period of detention, the FCSO clearly did not provide the Complainant with an equal opportunity to make outgoing telephone calls as required by the ADA and Section 504.

It is important to note that the Complainant's situation unfortunately does not appear to be an isolated occurrence at the FCCC. The Complainant provided the OCR with the names and contact information of three other deaf individuals who also allegedly did not receive the services of an interpreter at the FCCC and were only provided with limited

use of the TTY.⁵ The OCR was able to speak with two of these individuals, and the first individual told the OCR that he had been incarcerated at the FCCC in 2001, 2002, and 2004, but was not provided with an interpreter. He stated that during each detention the FCCC provided him with placards to communicate with, and that he was allowed to speak to his family for just a few minutes via the TTY. The second individual told the OCR that he was detained at the FCCC in December 2001, and was also not provided with an interpreter despite repeatedly requesting one. The individual stated that he was detained at the FCCC for a total of two weeks, and that the FCSO did not provide him with the opportunity to use the TTY to make a phone call until the end of the two-week period. Additionally, on March 19, 2002, the DOJ's Civil Rights Division, Disability Rights Section sent the FCSO a letter to discuss a complaint that it received alleging that the FCSO failed to provide a deaf inmate with effective communication during her June 2000 incarceration.⁶

Based on this evidence, it appears that while the FCSO has policies in place governing services to deaf or hard of hearing inmates, FCSO employees did not adhere to these policies and the relevant legal requirements under the ADA and Section 504 and failed to take appropriate steps to ensure that the FCSO's communications with the Complainant were effective and that the Complainant had an equal opportunity to participate in the FCSO's services and activities. Additionally, it is unclear how frequently and how adequately the FCSO is training its employees on these policies. Therefore, the OCR concludes that there appears to be sufficient evidence demonstrating that the FCSO violated the ADA and Section 504 and their implementing regulations.

Prior to the issuance of a final finding of non-compliance, which may lead to suspension, termination, or repayment of funding, the OCR is providing the FCSO with the opportunity to enter into voluntary compliance negotiations with the OCR to resolve this matter. *See* 28 C.F.R. §§ 35.172(c) (2011), 42.530(a) (2011). For the FCSO to come into compliance, the OCR recommends that the FCSO do the following, at a minimum:

- (1) agree to provide appropriate auxiliary aids and services, including qualified interpreters, where necessary to afford deaf or hard of hearing inmates, visitors, and members of the public who contact the FCCC an equal opportunity to participate in, and receive the benefits of, a service, program, or activity conducted at the FCCC, including, but not limited to, initial intake and booking, classification, medical screenings and treatment, and disciplinary hearings;

⁵ The OCR did not seek to verify the veracity of these accusations. However, we believe that it is important to bring these anecdotal reports to the attention of the FCSO as they reflect several deaf individuals' perceptions of the provision of auxiliary aids and services at the FCCC and their concerns that the FCSO is not providing appropriate services and communicating effectively with deaf or hard of hearing inmates.

⁶ In its March 19, 2002, letter, the Disability Rights Section stated that due to the fact that the FCSO has policies and procedures in place to communicate with hearing impaired inmates and has a contract with Deaf Services Center for training and interpretive services, the Section has decided to direct its limited enforcement resources elsewhere.

(2) agree to give primary consideration to the type of auxiliary aid or service that is requested by a deaf or hard of hearing inmate or visitor in compliance with the ADA and Section 504 and the DOJ's implementing regulations;

(3) ensure that inmates who are deaf or hard of hearing have the opportunity to make outgoing telephone calls via the TTY or other appropriate telecommunications devices which is comparable to the opportunity provided to hearing inmates;

(4) ensure that where a qualified interpreter is required for effective communication, the FCSO will use its best efforts to obtain the services of a qualified interpreter from Deaf Services, Inc. or another qualified contractor within one hour of the need for the interpreter;

(5) inform all inmates and visitors who are deaf or hard of hearing that they have a right to auxiliary aids and services, including the right to make outgoing telephone calls on the TTY;

(6) ensure that it is complying with the administrative requirements of Section 504 set forth at 28 C.F.R. § 42.505 (2011), as applicable, including the designation of a FCSO employee who shall coordinate the FCSO's compliance with Section 504, the adoption of grievance procedures, and the provision of notice that the FCSO does not discriminate in its programs and activities on the basis of a disability;

(7) expand upon the existing April 15, 2006, memoranda and develop a comprehensive, effective policy for ensuring effective communication with inmates and visitors to the FCCC who are deaf or hard of hearing that complies with the standards set forth in the ADA and Section 504 and their implementing regulations, along with relevant technical assistance materials developed by the DOJ;

(8) submit the newly developed policy to the OCR for review and approval, and, upon approval, immediately disseminate to the policy to all employees of the FCCC;

(9) provide and maintain closed-captioned television decoders, or built-in decoder televisions, in television viewing areas, so that inmates who are deaf or hard of hearing have the same opportunity for television viewing as hearing inmates;

(10) ensure that the FCCC has visual fire alarms in all appropriate areas of the FCCC;

(11) on an annual basis and during training for new employees, train every officer and employee of the FCCC on its written policy for ensuring effective

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communication with deaf or hard of hearing inmates and visitors and the relevant procedures for documenting and responding to a request for auxiliary aids and services;

(12) notify the appropriate court that an interpreter is necessary prior to every court appearance made by an inmate who is deaf or hard of hearing; and

(13) post signage at the FCCC in all places where notices to inmates and visitors are posted, including the booking area, any medical areas, the housing area, and the lobby, informing individuals that pursuant to the ADA and Section 504 the FCSO does not discriminate on the basis of a disability and discussing the specific ways in which the FCSO complies with these laws and ensures effective communication with deaf or hard of hearing individuals.

To assist the FCSO in creating a more effective policy on communicating with deaf or hard of hearing individuals, the OCR is enclosing the DOJ's *Model Policy for Law Enforcement on Communicating With People Who Are Deaf Or Hard Of Hearing*, available at <http://www.ada.gov/lawenfmodpolicy.htm>.

The FCSO has 21 days from the date of this letter to send its written request to enter into compliance negotiations with the OCR. If compliance negotiations are successful, the OCR and the FCSO will enter into a binding Resolution Agreement that will set forth the terms of the voluntary compliance agreement and the required time frame for the FCSO to complete the required actions. If voluntary compliance can not be reached, the OCR will proceed with issuing a final finding of non-compliance in accordance with 28 C.F.R. §§ 35.172(c) (2011); 42.530(a) (2011).

Please direct any written request to enter into compliance negotiations to OCR attorney Shelley Langguth. If you have any questions regarding this matter, please contact Ms. Langguth at (202) 305-2353.

Sincerely,

/s/

Michael L. Alston

Director

Enclosure