



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

Washington, D.C. 20531

June 15, 2012

Brian M. Zets, Esq.
Wiles, Boyle, Burkholder & Bringardner Co. LPA
300 Spruce Street, Floor One
Columbus, Ohio 43215

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

Dear Mr. Zets:

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 Groveport Police Department (GPD), in connection with the administrative Complaint that [REDACTED] (Complainant) has filed against the GPD. In his Complaint, the Complainant, who is deaf, alleges that officers with the GPD discriminated against him based on disability when they failed to provide him with a sign language interpreter during his arrest.

The OCR has completed our review of the documentation provided by both the GPD and the Complainant and has determined that there is insufficient evidence of a violation of the civil rights laws that we enforce. Our findings are set forth below for your review.

Factual Background

The Complainant alleges the following:

On the evening of March 12, 2010, Officer [REDACTED], Officer [REDACTED], and Sergeant [REDACTED] of the GPD arrived at the Complainant's home in response to a phone call from the Complainant's wife's son regarding an argument that the Complainant was having with his wife. When the officers arrived, the officers gave the Complainant a piece of paper and indicated that he should write down what occurred. The Complainant wrote down his version of the events along with a request for an interpreter, but the officers denied this request. The officers then handcuffed the Complainant and arrested

him for assault in violation of Ohio Rev. Code Ann. § 2903.13(A)¹ and domestic violence in violation of Ohio Rev. Code Ann. § 2919.25(A)². The officers transported the Complainant to GPD headquarters, where he was detained for approximately ninety minutes. During this time, the Complainant wrote another request for an interpreter, and Officer ██████ of the GPD wrote back, “[n]o.” The GPD then transferred the Complainant to the Franklin County Corrections Center operated by the Franklin County Sheriff’s Office for booking and detention.

In the GPD’s November 10, 2011, response to the OCR’s Notice of Discrimination Complaint and Data Request (Data Response), the GPD acknowledged that GPD officers did not provide the Complainant with a sign language interpreter in connection with his arrest. However, the GPD asserted that the officers’ communications with the Complainant were not so ineffective that an interpreter was necessary to guarantee that the Complainant was on equal footing with hearing individuals. According to the information contained in the GPD’s Data Response, which included a copy of the incident report regarding the Complainant’s arrest, the officers spoke with the Complainant’s wife and she told them that the Complainant had shoved her down on the couch and the bed and physically abused her. The officers observed a small abrasion on the Complainant’s wife’s wrist and a swollen and bruised middle toe on her left foot and photographed these injuries. The officers obtained written statements from the Complainant’s wife and her son, and requested that the Complainant step outside and sit in a patrol car and complete a written statement as to what occurred. The GPD asserted that the Complainant was able to understand the officers’ directions to step outside and write down what happened, and clearly understood what was happening and why it was happening.

The GPD referenced Ohio Rev. Code Ann. § 2935.03 (2012) in its Data Response, which states that when an officer has reasonable grounds to believe that an individual has committed domestic violence the officer may arrest and detain the individual, and that an officer has “reasonable grounds” when an individual executes a written statement alleging that the individual in question has committed this offense. The GPD asserted that in accordance with this statute, the officers did not need to interrogate the Complainant and did not have a lengthy, complex conversation with him, and that the Complainant’s wife’s written and oral statements regarding what occurred and the officers’ visual observations of signs of abuse provided probable cause to arrest the Complainant. The GPD provided the OCR with the handwritten notes that Officer ██████ exchanged with the Complainant on the scene, where, in response to the Complainant’s requests for an interpreter, Officer ██████ wrote down “I’m not asking you any questions. Her statement is enough,” and “[h]er statement is all we need. The rest you will have to tell the court tomorrow.” The GPD provided the OCR with the

¹ Ohio Rev. Code Ann. § 2903.13(A) (2012) states that no person shall knowingly cause or attempt to cause physical harm to another.

² Ohio Rev. Code Ann. § 2919.25(A) (2012) holds that no person shall knowingly cause or attempt to cause physical harm to a family or household member.

video footage from a GPD patrol vehicle which depicts some of the visual and verbal interactions between the officers and the Complainant and his wife in the home and when the officers placed the Complainant in the patrol vehicle; this footage is consistent with the GPD's accounting of what occurred.

In regard to the Complainant's allegation that despite his request the GPD did not provide him with an interpreter while he was being booked at the police station, the GPD said that an interpreter was not needed and that the Complainant was able to understand the officers' basic requests. The GPD disputed that the Complainant was at the police station for ninety minutes, stating that he arrived at the station at 9:45 p.m. and the GPD completed the booking process and transported him to the Franklin County Corrections Center by 10:30 p.m.

GPD Policies and Procedures Relevant to the Allegations

At the time of the Complainant's March 12, 2010, arrest, the GPD did not have any written policies or procedures regarding how to communicate with deaf individuals. In its Data Response, the GPD indicated that it is currently developing a written policy regarding communicating with individuals who are deaf or hard of hearing, which will incorporate instruction from the DOJ's *Communicating with People Who are Deaf or Hard of Hearing: ADA Guide for Law Enforcement Officers* (Jan. 2006) along with case law governing claims under the Americans with Disabilities Act of 1990 (ADA). The GPD provided the OCR with its policies regarding responding to incidents involving domestic violence and making arrests, Policy No. 3.39, "Domestic Violence" (effective Feb. 15, 2008) and Policy No. 1.47, "Arrest, Search, Seizure" (effective Feb. 15, 2008); these policies do not address how to communicate with deaf or hard of hearing individuals.

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). Additionally, Section 504 of the Rehabilitation Act of 1973 (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 GPD 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 ADA, "[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 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). Under the ADA, a public entity is required to 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. 28 C.F.R. pt. 35, app.A, at 573 (2011).

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.*

The DOJ has published several guidance documents that address a law enforcement agency’s responsibility to ensure effective communication with a deaf or hard of hearing individual, including during an arrest. In U.S. Dep’t of Justice, *Communicating with People Who Are Deaf or Hard of Hearing: ADA Guide for Law Enforcement Officers*

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.

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.

(Jan. 2006), available at <http://www.ada.gov/lawencomm.htm>, the DOJ states that individuals who are deaf or hard of hearing are entitled to the same services law enforcement provides to everyone else, and that they may not be excluded from or denied services or otherwise be treated differently than other people. However, the DOJ also advises that police officers do not have to arrange for a sign language interpreter every time an officer interacts with a person who is deaf, and that whether a qualified sign language interpreter or other communication aid is required will depend on the nature of the communication and the needs of the deaf individual. U.S. Dep't of Justice, *Commonly Asked Questions About the Americans with Disabilities Act and Law Enforcement*, Section III.10 (Apr. 4, 2006), available at http://www.ada.gov/q%26a_law.htm. The DOJ further advises that “[i]n general, if an individual who does not have a hearing disability would be subject to police action without interrogation, then an interpreter will not be required, unless one is necessary to explain the action being taken.” *Id.* at Section III.11. See also U.S. Dep't of Justice, *Communicating with People Who Are Deaf or Hard of Hearing: ADA Guide for Law Enforcement Officers* (stating that an interpreter is not required to carry out an arrest when an officer has probable cause to make a felony arrest without an interrogation).

Case law has also found that a failure to provide an interpreter for a deaf individual during an arrest does not automatically violate the ADA or Section 504. In *Tucker v. Tennessee*, 539 F.3d 526, 536 (6th Cir. 2008), the Sixth Circuit Court of Appeals concluded that law enforcement officers' failure to provide an interpreter during an arrest for an assault that the officers witnessed did not violate the ADA, as there was no evidence that the provision of a sign language interpreter would have changed the events in any way. To constitute a violation of the ADA or Section 504, the failure to provide an interpreter during an arrest must result in the arrestee suffering greater injury or indignity than other arrestees due to the lack of an interpreter. See *Ulibarri v. City & County of Denver*, 742 F.Supp.2d 1192, 1213 (D.Colo. 2010).

Based on the OCR's review of the information that has been submitted by both the Complainant and the GPD, the OCR finds that under the particular circumstances at issue in the Complaint, the evidence is insufficient to demonstrate that the officers' failure to provide the Complainant with an interpreter violated the ADA or Section 504. As an initial matter, the Complainant's hearing impairment clearly constitutes a disability. As discussed above, the DOJ regulations implementing the ADA and Section 504 require that an agency provide appropriate auxiliary aids and services to ensure that deaf or hard of hearing individuals have an equal opportunity to participate in a service, program or activity. The DOJ's guidance documents discussing the ADA explicitly state that police officers do not have to arrange for a sign language interpreter every time an officer interacts with a person who is deaf, and that if an individual who does not have a hearing disability would be subject to police action without interrogation, then an interpreter will not be required, unless one is necessary to explain the action being taken. Furthermore, relevant case law indicates that in order for the denial of an interpreter during an arrest to constitute a violation under the law, a deaf or hard of hearing individual must experience an injury or a changed circumstance as a result of this denial. The evidence presented by

the GPD demonstrates that the officers did not need to interrogate the Complainant in order to have probable cause to arrest him and did not engage in any lengthy, complex conversations with him, and that the Complainant appeared to understand that he was being arrested and what he was being arrested for. It does not appear that the provision of a sign language interpreter would have changed the events in any way or would have resulted in the Complainant not being arrested. Accordingly, in these limited circumstances, the officers' failure to accommodate the Complainant's desire for an interpreter did not violate the ADA or Section 504.

The OCR would like to stress that our finding is limited to the particular circumstances presented in the Complaint, and that the GPD has an obligation during every encounter with members of the public to ensure that its communication with deaf or hard of hearing individuals is as effective as its communication with hearing individuals. The GPD noted in its Data Response that the Complainant is the only deaf or hard of hearing individual that the GPD has come into contact with, and that during three previous interactions with the Complainant that did not result in an arrest the GPD communicated with the Complainant through the use of written notes or by using a family member to interpret. As discussed previously in this Notice of Findings, at the time of the Complainant's March 12, 2010, arrest, the GPD did not have any written policies or procedures regarding how to communicate with deaf individuals; however, in its Data Response, the GPD indicated that it is developing a written policy which will incorporate instruction from the DOJ's *Communicating with People Who are Deaf or Hard of Hearing: ADA Guide for Law Enforcement Officers*. The GPD further stated that on March 15, 2011, the GPD obtained a list of sign language interpreters who are used by several local Franklin County agencies; you subsequently informed OCR attorney Shelley Langguth that the GPD assumes that these individuals are certified. The GPD also noted that all employees receive instruction on interacting with deaf individuals while they are in the police academy, and that in March, April, and May 2011 the GPD chief of police met with GPD officers to reinforce how to communicate with deaf or hard of hearing individuals, including a review of the DOJ's *Commonly Asked Questions About the Americans with Disabilities Act and Law Enforcement*.

The OCR commends the GPD for taking action in response to this Complaint to develop a policy for communicating with deaf or hard of hearing individuals, to obtain a list of sign language interpreters, and to train employees on their responsibility to ensure effective communications with deaf individuals. For your review, I am enclosing a copy of 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 GPD should ensure that its policy on communicating with individuals who are deaf or hard of hearing is consistent with this model policy, the DOJ guidance documents on this issue, and the ADA and Section 504 and the DOJ's implementing regulations. The GPD should also ensure that the sign language interpreters that it utilizes to communicate with deaf or hard of hearing individuals are qualified interpreters. Also, the GPD should continue to periodically train its employees on their responsibility to ensure that

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communications with deaf or hard of hearing individuals is as effective as communication with hearing individuals

The OCR is always available to provide the GPD with technical assistance as it continues to strengthen its policies and procedures for communicating with hearing impaired individuals. If the GPD requires any technical assistance in implementing these recommendations, please do not hesitate to contact Ms. Langguth at (202) 305-2353.

Sincerely,

/s/

Michael L. Alston

Director

Enclosure