



U.S. Department of Justice

Office of Justice Programs

*Office for Civil Rights*

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Washington, D.C. 20531

October 4, 2022

VIA CERTIFIED MAIL

Sheriff Tim Lane  
Scott County Sheriff's Office  
600 West 4<sup>th</sup> Street  
Davenport, IA 52801-1003

Re: *Notice of Findings*  
*OCR Complaint No. 22-OCR-0675*

Dear Sheriff Lane:

Thank you for the information that the Scott County Sheriff's Office (SCSO) submitted to the Office for Civil Rights (OCR), Office of Justice Programs, U.S. Department of Justice (DOJ) in connection with the above-referenced Complaint that a third-party complainant (Complainant) submitted to the OCR. In this Complaint, the Complainant alleged that the SCSO is not providing reasonable accommodations to deaf or hard of hearing individuals residing at the Scott County Jail (Jail). Specifically, the Complaint references the fact that over the past several years, the Davenport Civil Rights Commission (Commission) has been investigating a complaint filed by a deaf individual who alleged that Scott County did not provide him with reasonable accommodations for his disability while he resided at the Jail in 2015 and 2016. The individual alleged that Scott County denied the majority of his requests to use a text telephone (TTY) to make phone calls during his periods of detention, and that when he was able to use the TTY, the TTY did not allow him to call 711 or an 800 number to reach a telecommunications relay service. The OCR understands that the SCSO is the governmental unit within Scott County that administers the Jail.

The OCR has reviewed all of the information before us and has determined that the specific concerns raised in the complaint to the Commission appear to have been resolved. The OCR, however, has concerns that the SCSO does not currently have adequate policies and procedures in place to ensure that it can effectively communicate with deaf or hard of hearing individuals detained at the Jail. The OCR's findings, concerns, and recommendations are set forth below.

The OCR has the administrative responsibility for ensuring that recipients of DOJ financial assistance do not discriminate against protected classes of individuals based on race, color, national origin, disability, sex, religion, and age. The laws that the OCR enforces include Title II of the Americans with Disabilities Act of 1990 (ADA), which states that no qualified individual

with a disability shall, by reason of a disability, be excluded from participation in or denied the benefits of the services, programs, or activities of a public entity. 42 U.S.C. § 12132. Section 504 of the Rehabilitation Act of 1973 (Section 504) contains a similar provision prohibiting discrimination by recipients of federal funding. *See* 29 U.S.C. § 794.

Pursuant to the DOJ's regulations implementing Title II of the ADA, an agency shall take appropriate steps to ensure that communications with individuals with disabilities are as effective as communication with others. 28 C.F.R. § 35.160(a)(1). To ensure effective communication, an agency must provide appropriate auxiliary aids and services where necessary to afford individuals with disabilities an equal opportunity to participate in the agency's services, programs, and activities. *Id.* at § 35.160(b)(1). Auxiliary aids and services include a variety of services such as qualified interpreters, written materials, the exchange of written notes, assisted listening devices, and text telephones. *Id.* at § 35.104.

The type of auxiliary aid or service necessary to ensure effective communication in a particular situation 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). *See also* U.S. Dep't of Justice, *The Americans with Disabilities Act: Title II Technical Assistance Manual Covering 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.”). When a law enforcement officer is engaging in any lengthy or 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/lawenfcomm.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).

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). Entities operating detention or correctional facilities must make a TTY or other telecommunications device available to deaf incarcerated individuals under the same terms and conditions as telephone privileges offered to all incarcerated individuals. 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](http://www.ada.gov/q%26a_law.htm).

In a June 9, 2022, letter, the OCR notified the SCSO of the allegations contained in the Complaint and requested that it provide the OCR with some information on its current policies and procedures regarding communicating with deaf or hard of hearing individuals detained at the Jail. The requested information included copies of any written SCSO policies on interacting with deaf or hard of hearing individuals detained at the Jail, an explanation of all

telecommunications devices that the SCSO has available for deaf or hard of hearing individuals to communicate with others outside of the Jail, an explanation of whether such telecommunications devices allow a user to contact a telecommunications relay number, and an explanation of all auxiliary aids and services that the SCSO uses to communicate with deaf or hard of hearing individuals at the Jail. The SCSO replied on June 29, 2022, and responded to the OCR's follow up inquiries on August 5, 2022.

In its responses, the SCSO said that it currently offers the following auxiliary aids and services to individuals detained at the Jail: a Video Relay System (VRS), a TTY, and an "Ubi Duo" wireless device. The information provided by the SCSO indicates that the VRS is available in the booking area and also on a portable tablet for deaf or hard of hearing individuals to use to place an outgoing phone call. Based on the information provided by the SCSO, the OCR understands that the VRS allows a deaf or hard of hearing individual to communicate directly with another deaf or hard of hearing individual through sign language over a video, or to sign to a remote VRS interpreter who places a call to a hearing individual and relays the conversation back and forth. The SCSO said that deaf or hard of hearing individuals also have the option to use the TTY to place outgoing phone calls, and that the TTY does now allow individuals to call a telecommunications relay service at an 800 number.

The SCSO further said that it uses the Ubi Duo device to communicate with deaf or hard of hearing individuals at the Jail, which consists of two portable tablets that are electronically connected, and which individuals can use to type notes to each other. The SCSO said that if an individual arrives at the Jail who is deaf or hard of hearing, the SCSO uses the Ubi Duo to start communicating with the individual and to orientate the individual on the Jail and complete the booking process. The SCSO indicated that if an individual is deaf or hard of hearing, the SCSO notes this in its Jail Management System and on the inmate log. The SCSO further said that other than its contract with the VRS provider, it currently does not have any contracts in place with external companies for sign language interpreting services.

The SCSO provided the OCR with a copy of its recently updated Policy 17005.2, *Inmate Telephone Use* (effective Aug. 4, 2022). Policy 17005.2 states that the SCSO has VRS and Telecommunications for the Deaf (TDD)<sup>1</sup> available for detained individuals who have a hearing or speech disability. Policy 17005.2 indicates that if a detained individual has a hearing or speech disability or wishes to communicate with parties who have such disabilities, the individual should inform the Housing Officer. According to Policy 17005.2, the Housing Officer then contacts the Shift Supervisor to request to use the TDD or VRS, and the Shift Supervisor "assesses events taking place in the facility at the time, i.e. Video court or other usage of the room where the VRS unit is located, and availability of escort staff." Policy 17005.2 contains several sections setting forth the procedures for staff to follow in assisting individuals in using the TDD or VRS. Policy 17005.2 generally states that phone calls by detained individuals are limited to fifteen minutes, and the section specific to TDD calls also notes that such calls are limited to fifteen minutes.<sup>2</sup>

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<sup>1</sup> The OCR understands that the terms TTY and TDD are often used interchangeably.

<sup>2</sup> The SCSO also provided the OCR with the previous version of Policy 17005.2, effective March 15, 2021. The OCR's review of both versions demonstrates that Policy 17005.2 has been updated to state that VRS is available on

The SCSO does not have any written policies on communicating with individuals at the Jail who are deaf or hard of hearing, other than the information on TDD and VRS contained in Policy 17005.2. The SCSO said that it is working on a formal policy regarding Ubi Duo.

Based on the information that the SCSO provided, it appears that the SCSO has a TTY/TDD, along with VRS, available at the Jail for inmates who are deaf or hard of hearing to use to make phone calls. It also appears that the TTY now allows individuals to call a telecommunications relay service from the TTY. The OCR has not received any information from the Complainant or otherwise indicating that the SCSO currently is not providing deaf or hard of hearing individuals with access to the TTY or VRS when requested. Accordingly, it appears that the concerns raised in the complaint to the Commission have been addressed. Consequently, the SCSO is not in violation of ADA and Section 504 with respect to the complaint's allegation.

This conclusion notwithstanding, the OCR does have concerns with some of the information in SCSO Policy 17005.2, along with the fact that the SCSO does not appear to have all of the policies and procedures in place necessary to ensure compliance with the ADA and Section 504. In regard to Policy 17005.2, the policy contains language indicating that a Shift Supervisor must approve a request to use the TTY or VRS, and that upon such a request the Shift Supervisor will assess the current situation in the Jail. As discussed above, the SCSO has an obligation under the ADA and Section 504 to make a TTY or VRS available to deaf or hard of hearing detained individuals under the same terms and conditions as telephone privileges offered to all detained individuals. The SCSO should make every effort to ensure that deaf or hard of hearing individuals have prompt access to the TTY or VRS upon request to the same extent, and at the same time, as other detained individuals are able to make telephone calls. Please note that this also includes ensuring that deaf or hard of hearing individuals have sufficient time to use the TTY or VRS. Typed conversations, or conversations through an interpreter, may take longer than a telephone conversation between two hearing individuals. The SCSO should take this into account and include language in Policy 17005.2 stating that the SCSO will provide deaf or hard of hearing detained individuals with access to the TTY/TDD and VRS that is equal to the opportunity provided to other detained individuals to make phone calls, and that the SCSO will extend the fifteen-minute time limit for calls placed through the TDD or VRS as necessary to allow sufficient time for the call.

The OCR is also concerned that the SCSO does not have any contracts or agreements in place with qualified sign language interpreters, and presumably never uses sign language interpreters to communicate with deaf or hard of hearing individuals detained at the Jail. While the SCSO currently uses the Ubi Duo to exchange written notes with deaf or hard of hearing individuals at the Jail, as discussed above, there may be situations where written notes are not sufficient to provide effective communication and a qualified interpreter is required. Whether an interpreter is necessary depends on the particular circumstances of the interaction, including the method of communication normally used by the individual; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place. For instance, for lengthy, complex conversations where an individual's primary language is a signed

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a portable tablet and to include the number for the telecommunications relay service that individuals can dial on the TTY.

language, an interpreter may be required. Examples of such situations may include booking and intake, medical screenings and treatment, disciplinary proceedings, meetings with classification officers, and educational, vocational, or religious programming. The SCSO should establish agreements with professional sign language interpreter providers who can provide qualified interpretation services in the relevant signed language (e.g., American Sign Language, Signed English), either in-person or remotely, as necessary.<sup>3</sup>

Lastly, while Policy 17005.2 references use of TDD and VRS, and the SCSO told the OCR that it is in the process of developing a policy on the use of Ubi Duo, the SCSO does not have a comprehensive, stand-alone policy on communicating with deaf or hard of hearing individuals detained at the Jail. Please be aware that the DOJ's regulations implementing the ADA and Section 504 prohibit funded agencies from utilizing methods of administration in the delivery of services which have the effect of subjecting individuals to discrimination. 28 C.F.R. §§ 35.130(b)(3)(i), 42.503(b)(3). The SCSO's lack of a comprehensive policy explaining the requirement to ensure effective communication with deaf or hard of hearing individuals detained at the Jail, and discussing in one place all of the auxiliary aids and services that SCSO employees should use to communicate with deaf or hard of hearing individuals and when particular aids or services may be appropriate, may result in SCSO employees not taking appropriate steps to ensure effective communication. As a result, the lack of a comprehensive policy may result in the SCSO having methods of administration that subject deaf or hard of hearing individuals to an unequal opportunity to participate in the SCSO's services, programs, or activities.

To ensure compliance with the ADA and Section 504, in drafting the stated policy on Ubi Duo, the SCSO should expand that policy so that it broadly discusses how the SCSO will ensure effective communication and equal treatment of deaf or hard of hearing individuals detained at the Jail.<sup>4</sup> The policy should discuss the SCSO's legal obligation to ensure effective communication with deaf or hard of hearing individuals detained at the Jail and to ensure such individuals can fully access the SCSO's services, programs, and activities. The policy should also discuss all of the auxiliary aid and services that the SCSO has in place to communicate with deaf or hard of individuals detained at the Jail and to ensure they can place telephone calls. This discussion should include information on any qualified sign language interpreters that the SCSO enters into an agreement with. Additionally, the policy should provide examples of what type of auxiliary aids or services may be appropriate under particular circumstances. To assist the SCSO in creating a comprehensive policy on communicating with deaf or hard of hearing individuals, the OCR refers the SCSO to 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>, and *Communicating with People Who Are Deaf or Hard of Hearing: ADA Guide for Law Enforcement Officers*, available at <https://www.ada.gov/lawenfcomm.htm>. Once the SCSO develops this policy, it should

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<sup>3</sup> Please note that VRS is not the same as video remote interpreting, which involves an interpreter at a remote location when two people are together and they need an interpreter. VRS may not be used in such circumstances. See the Federal Communications Commission's Consumer Guide on Video Relay Services, available at [https://www.fcc.gov/sites/default/files/video\\_relay\\_services.pdf](https://www.fcc.gov/sites/default/files/video_relay_services.pdf).

<sup>4</sup> While the OCR's review, and our recommendations, focuses on how the SCSO communicates with deaf or hard of hearing individuals at the Jail, the OCR strongly recommends that the policy that the SCSO develops covers all law enforcement services that the SCSO provides, including traffic stops, interviews, interrogations, and arrests.

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immediately train all Jail staff on the policy and should establish a protocol for providing refresher training to all staff on a periodic basis.

**To ensure continued compliance with the ADA and Section 504, the SCSO should implement the recommendations set forth above. Upon receipt and review of this letter, the SCSO should contact OCR Attorney [REDACTED] to discuss a timeline for developing a comprehensive policy on communicating with deaf or hard of hearing individuals. [REDACTED] is also available to provide the SCSO technical assistance in crafting this policy. [REDACTED] may be reached at [REDACTED] or [REDACTED].**

Sincerely,

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Michael L. Alston

Director

Signed by: MICHAEL ALSTON

cc: Stefanie Bush  
Scott County Sheriff's Office Jail Division