



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

Washington, D.C. 20531

June 6, 2014

Sheriff Phil Wowak
Santa Cruz County Sheriff's Office
701 Ocean Street, Room 340
Santa Cruz, CA 95060

Re: Notice of Findings
Doe v. Santa Cruz County Sheriff's Office (14-OCR-238)

Dear Sheriff Wowak:

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) in connection with the administrative Complaint that an anonymous individual (Complainant) filed against the Santa Cruz County Sheriff's Office (SCCSO). The Complainant alleges that the Santa Cruz County Jail located at 259 Water Street (Main Jail) is not accessible to visitors who have mobility disabilities in violation of Title II of the Americans with Disabilities Act of 1990 (ADA) and Section 504 of the Rehabilitation Act of 1973 (Section 504).

The OCR has completed our review of the information and documentation provided by the Complainant and the SCCSO and has determined that the evidence is insufficient to establish a violation of the ADA and Section 504 and their implementing regulations. Our findings are set forth below for your review.

Factual Background

The Complainant alleges the following:

The Complainant, who has a mobility disability, was a visitor to the Main Jail operated by the SCCSO. The Complainant alleges that the Main Jail is not accessible to individuals such as herself who utilize wheelchairs or other mobility devices, as they cannot easily open the door to enter or exit the lobby of the jail because there is no mechanism such as a push button to help open the door. The Complainant further alleges that such individuals have difficulty communicating with SCCSO employees in the lobby of the Main Jail because the counter is too high.

The SCCSO provided the OCR with responses to the Complainant's allegations on March 14 and April 29, 2014, including requested measurements and photographs of the entrance doors to the lobby of the Main Jail and the public counters within the lobby to the Main Jail. The information provided by the SCCSO indicates that the Main Jail was constructed in 1982, and that the entrance to the Main Jail is through a set of double doors which were installed in 2012. Each door is 36 inches wide, and has a fixed exterior handle and interior crash bar handle that are manually

operated. The lower portion of the exterior handle is 34 inches from the ground and the upper portion of the exterior handle is 44 inches from the ground. The interior crash bar handles are 34 inches from the ground. At the time of the SCCSO's response, the Main Jail did not contain any automated button for visitors to press to open the doors. There is an intercom box located outside of the Main Jail to the left of the doors that contains a call button that is approximately 48 inches from the ground; there is a sign directly above the intercom box that states in English and Spanish, "If the door is locked please use the intercom to get assistance." The SCCSO said that if an individual presses the call button the individual is connected to a SCCSO officer who operates the Central Control workstation inside the Main Jail, and that the officer will dispatch an officer or staff member to assist an individual if the doors to the Main Jail are locked or if the individual otherwise needs assistance. The SCCSO told the OCR that any visitor to the Main Jail requesting a special accommodation for mobility reasons would be assisted by a SCCSO officer upon activating the intercom button.

The SCCSO stated that there are two counters within the lobby of the Main Jail; one in the Reception Area, and one in the Custody Alternatives Program (CAP) Area where individuals report for out of custody booking, work release, electronic monitoring and other similar programs. According to the SCCSO, visitors to the Main Jail typically approach the Reception Area first. The Reception Area was constructed around 2012, and contains a service counter that is 34 inches high, 124 inches long, and 12 inches deep. The CAP Area was remodeled around 2008, and contains a service counter that is 46 inches high, 165.5 inches long, and 16 inches deep. The SCCSO stated that receptionists and CAP staff may leave the counters to interact with individuals in the lobby directly or to provide assistance as needed.

According to the SCCSO, since January 2013 receptionists have reported seeing an individual in a wheelchair approach the Main Jail on two occasions and that they took the initiative to open the doors for the individuals. Officers working the night shift when the doors to the Main Jail are locked reported responding to one intercom contact at the entrance doors where an individual in a wheelchair requested assistance, and an officer responded and assisted the individual. Since January 1, 2012, the SCCSO has no record of receiving any complaints from an individual with a mobility disability alleging that the individual could not access the Main Jail or communicate with staff within the Main Jail.

On June 5, 2014, the SCCSO told the OCR that in August 2014 the SCCSO is scheduled to lower the height of the counter that is contained in the CAP Area and to install automatic entrance doors to the lobby of the Main Jail.

SCCSO Policies and Procedures Relevant to the Allegations

The SCCSO provided the OCR with a section from the SCCSO Custody Manual, C 234, *Accessibility – Facility and Equipment* (draft dated September 17, 2013)¹. This policy states that the SCCSO prohibits discrimination based on disability, and that it adheres to the ADA and other applicable federal and state laws, regulations and guidelines in providing reasonable accommodations to ensure that the facility is reasonably accessible to the public and visitors with disabilities. The policy indicates that the SCCSO will provide reasonable accommodations in areas that include, but

¹ The SCCSO said that this policy is still in draft format and will become effective on or before July 1, 2014.

are not limited to, public areas that are wheelchair accessible and visitation areas that can accommodate wheelchairs and other mobility devices.

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.

Additionally, 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. 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; 29 U.S.C. § 705(9)(B). As an initial matter, a mobility impairment that requires the use of a wheelchair or other mobility device constitutes a disability. Since the SCCSO 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, each facility or part of a facility constructed or altered by a public entity after January 26, 1992, shall be constructed or altered in such a manner that the facility or part of the facility is readily accessible to and usable by individuals with disabilities. 28 C.F.R. §§ 35.151(a), (b).² If physical construction or alterations commenced on or after March 15, 2012, the construction or alterations shall comply with the 2010 ADA Standards for Accessible Design (2010 Standards) developed by the DOJ. 28 C.F.R. § 35.151(c)(3). If physical construction or alterations commenced on or after September 15, 2010, and before March 15, 2012, then the construction or alteration may comply with the 2010 Standards, the 1991 ADA Standards for Accessible Design (1991 Standards), or the Uniform Federal Accessibility Standards (UFAS). 28 C.F.R. § 35.151(c)(2). For physical construction or alterations that commenced after July 26, 1992 but prior to September 15, 2010, the construction or alterations must comply with the 1991 Standards or the UFAS.

Based on the information, measurements, and photographs provided by the SCCSO, it appears that the entrance doors to the Main Jail and the public counters within the Main Jail currently comply with the ADA and the applicable accessibility standards. The SCCSO told the OCR that the entrance doors to the Main Jail were installed in 2012; even if the doors were installed prior to March 15, 2012, they were installed on or after September 15, 2010, and may be evaluated by the 2010 Standards. There is no requirement in either the 2010 or 1991 Standards that agencies have power-operated or automatic doors. According to Section 404.2.7 of the 2010 Standards, door handles shall be 34 inches minimum and 48 inches maximum above the ground. The bottom of the door handle on each entrance door to the Main Jail is 34 inches above the ground and the top of the handle is 44 inches above the ground, and therefore the height of the door handles comply with the 2010 Standards. Section 404.2.3 of the 2010 Standards states that door openings shall provide a clear opening width of 32 inches minimum, measured between the face of the door and the stop with the door open 90 degrees. The information and photographs provided by the SCCSO

² 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). Accordingly, the principles associated with the DOJ’s regulations implementing the ADA apply equally to the Complainant’s allegations of discrimination under Section 504.

demonstrate that each entrance door is 36 inches wide, and it appears from the photographs that the opening width of the door opening is or is very close to 36 inches.

As for the information counter in the Reception Area, the counter was constructed around 2012 and may also be evaluated according to the 2010 Standards. Based on the photographs provided by the SCCSO, it appears that individuals approach the counter from a forward approach. Section 904.4.2 of the 2010 Standards require a counter that is a minimum of 30 inches long and a maximum of 36 inches high. The counter in the Reception Area is 124 inches long and 34 inches high, and therefore complies with these requirements. According to Sections 305.3 and 904.4.2 of the 2010 Standards there shall be clear ground space in front of the counter that is at least 30 inches wide and 48 inches long; based on the photographs provided, it appears that this clear space exists.

While the CAP Area is intended to assist individuals in booking, work release, and electronic monitoring, it is possible that an individual who is at the Main Jail to visit an inmate may approach the counter in the CAP Area to seek assistance. That counter was remodeled in 2008, and therefore the OCR is evaluating compliance with the 1991 Standards. Section 7.2 of the 1991 Standards states that service counters must be either: (i) a minimum of 36 inches in length with a maximum height of 36 inches; or (ii) an auxiliary counter with a maximum height of 36 inches in close proximity to the main counter shall be provided; or (iii) equivalent facilitation shall be provided such as by using the space on the side of the counter to hand materials back and forth. The counter in the CAP Area is 46 inches high and 165.5 inches long, which is higher than the maximum height of 36 inches under the first prong. However, the counter in the Reception Area is in close proximity and has a height of 34 inches and may serve as an "auxiliary counter." Sections 4.3.3 and 7.2 of the 1991 Standards state that all service counters shall be on an accessible route that has a minimum clear width of 36 inches and Section 4.2.4 states that the minimum clear width space to accommodate a wheelchair is 30 inches wide and 48 inches long; based on the photographs provided, it appears that this clear space exists in front of the counter. Therefore, the counter in the CAP Area currently complies with the 1991 Standards.

Based on the evidence we reviewed, the OCR finds it is insufficient to support the Complainant's allegations that the SCCSO is currently in violation of the ADA and Section 504. The OCR commends and encourages the SCCSO's intended actions to further ensure accessibility by lowering the height of the counter in the CAP Area and by installing automatic entrance doors. If the SCCSO requires any technical assistance in making those modifications, please do not hesitate to contact us.

The OCR is administratively closing our review of the SCCSO at this time. Thank you for your cooperation in this review. If you have any questions, please contact Ms. Langguth at (202) 305-2353.

Sincerely,



Michael L. Alston
Director
Signed by: MICHAEL ALSTON

cc: Lieutenant Fred Plageman

Sheriff Phil Wowak

June 6, 2014

Page 5

Santa Cruz County Corrections Bureau, Main Jail