



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

Washington, D.C. 20531

February 4, 2019

Sheriff Deryl Loar
Indian River Sheriff's Office
4055 41st Avenue
Vero Beach, FL 32960

Re: Notice of Findings
[REDACTED] v. Indian River County Sheriff's Office (17-OCR-1042)

Dear Sheriff Loar:

Thank you for the information and documentation that you submitted to the Office for Civil Rights (OCR), Office of Justice Programs (OJP), U.S. Department of Justice (DOJ), on behalf of the Indian River County Sheriff's Office (IRCSO or Respondent), in connection with the Complaint (Docket No. 17-OCR-1042), which was submitted by [REDACTED] (Complainant).¹ Respondent is subject to the OCR's enforcement authority because it receives federal financial assistance from the DOJ's OJP. Complainant alleged that Respondent unlawfully discriminated against him on the basis of disability by failing to provide effective communication regarding a [REDACTED] arrest and detention.

The OCR has carefully reviewed the evidence provided, and has concluded that the evidence does not support a finding that Respondent is in violation of Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 (Section 504), and/or Title II of the Americans with Disabilities Act of 1990, as amended (ADA), and their implementing regulations. As discussed below, although evidence obtained during the course of our investigation raised concerns regarding the IRCSO's policies, procedures, and trainings for effective communication with individuals who have communication disabilities, the IRCSO has proactively adopted several changes to ameliorate these concerns.

I. Jurisdiction

The OCR is responsible for ensuring that recipients of financial assistance from the OJP comply with federal laws that prohibit discrimination in the delivery of services or benefits based on disability and other protected categories. Respondent currently receives OJP funds, which include Bureau of Justice Assistance (BJA) grants (e.g., BJA 2015BUBX15076445 (Project Period: 08/11/2015-08/11/2020), BJA 2018BOBX18095304 (Project Period: 09/13/2018-09/13/2023)). Additionally, Complainant's Complaint was timely. See 8 C.F.R. §§ 35.170(b), 42.530(a) (all administrative complaints of disability discrimination must be filed with the DOJ within 180 days from the date of the alleged discrimination). As such, the OCR has authority to investigate this Complaint regarding alleged disability discrimination.

¹ The OCR notes that federal authorities arrested Complainant on unrelated criminal charges during the course of the OCR's investigation. Complainant has pled guilty and remains in federal custody.

I. Factual Background

A. Complainant's Allegations

Complainant is a deaf individual who has a reduced capacity to communicate in written English. Complainant uses American Sign Language (ASL) as his primary language. Complainant was involved in an automobile accident on [REDACTED]. IRCSCO Deputies responded to the scene and communicated with Complainant via written notes. Complainant requested an ASL interpreter, but none was provided. Complainant was arrested and his hands were cuffed behind his back, which prevented him from communicating via notes or ASL.

IRCSCO Deputies transported Complainant to the Indian River County Jail. Complainant did not observe any posted ADA signage or telephone numbers. Further, IRCSCO Deputies did not provide Complainant with any assistive device accommodations to facilitate telephonic communication. When a Deputy uncuffed Complainant's hands to process his booking, Complainant again requested an ASL interpreter. As he was being processed, Complainant attempted to take papers from an IRCSCO Deputy. The Deputy instructed Complainant to return the papers. Complainant returned one paper at which time the Deputy tackled Complainant. Complainant was placed in a high security room where he repeatedly requested an ASL interpreter. Complainant was eventually released when his mother paid his bail and prior to the IRCSCO providing Complainant with ASL interpreter services.

On December 12, 2016, Complainant returned to the IRCSCO to file a complaint regarding the lack of effective communication during his recent interaction with the IRCSCO. Complainant requested an ASL interpreter. A Deputy responded to this request via a written note, which stated that no interpreter was available.

B. IRCSCO's Response

In response to the OCR's Data Request, the IRCSCO stated that, "All IRCSCO personnel are required to review the U.S. Department of Justice publication 'Communicating with People Who Are Deaf or Hard of Hearing – ADA Guide for Law Enforcement Officers.'" Despite the OCR's request, the IRCSCO did not initially provide information regarding any ADA-related trainings and did not state how frequently employees are required to review ADA-related policies, procedures, and guidance.

The IRCSCO confirmed that an IRCSCO Deputy who responded to Complainant's automobile accident on [REDACTED], communicated with Complainant through written notes. The Deputy subsequently arrested Complainant based on an outstanding warrant and communicated this information to Complainant via written notes. The IRCSCO confirmed that Complainant was not subjected to any custodial interrogation.

The IRCSCO further confirmed that written notes were used to communicate with Complainant during the booking process. According to the IRCSCO, Complainant appeared to understand both information in the written notes as well as other, non-verbal communications. As the IRCSCO stated, Complainant was non-compliant regarding the requirement to remain seated and at one point physically took booking and other paperwork, which resulted in an IRCSCO Deputy physically securing Complainant.

Upon the OCR's request, the IRCSCO provided copies of its written policies concerning effective communication with individuals who have communication disabilities. According to the IRCSCO's Intra-

Divisional Procedure (IDP) 900.07.01 (Subject: Communicating with Limited English Proficiency (LEP), Deaf and Hearing Impaired Inmates; Effective Date: 7/11/17), “Bureau of Corrections shall provide at no cost to the inmate accurate and timely language assistance and effective communication to those inmates with limited English proficiency, deaf or hearing impaired.” This IDP notes that, “The type of aid required for effective communication will depend on the individual’s usual method of communication. In many circumstances oral communication, supplemented by gestures and visual aids, or an exchange of written notes will be an effective means of communication of people with a hearing or speech disability. In other circumstances, a qualified sign language or oral interpreter may be needed to communicate effectively with the person who is deaf or hearing impaired.” See also General Order 4010.10 (Subject: Qualified Interpreter, Effective Date: 4/12/11). This IDP further directs that, “Agency members should ascertain from the individual with the hearing impairment what type of auxiliary aid or service they require. Agency members should defer to those expressed choices unless: a. There is another equally effective way of communicating. b. Doing so would alter the nature of the law enforcement activity, or cause unnecessary administrative or financial burden.” This IDP requires that, “The facility will maintain and display the phone number for the Deaf Communications Specialists that are authorized to provide qualified sign language and oral interpreting services, as needed, twenty-four (24) hours a day. Prior to contacting a Deaf Communications Specialist, other less costly alternatives should be attempted.”

Similarly, General Order 4100.58 (Subject: Responding to Persons With Mental Illness or Other Disabilities, Effective Date: 6/20/17) provides that, “Before committing to a course of action, deputies should attempt to identify whether or not they are dealing with a person who has a communication-related disability. Should a deputy suspect that he has encountered an individual who has speech or hearing disabilities, and requires the services of a sign language interpreter, the deputy should contact the Public Safety Dispatch Section.” According to this General Order, “The Public Safety Dispatch Section maintains a current list of associates and associations that provide interpreter services. They will make notification in accordance with the guidelines of those listed and request an interpreter to respond.”

Further, IRCSO IDP 900.12.02 (Subject: Mail, Correspondence and Community Contact; Effective Date: 7/30/17) states that, “Telecommunication Device for the Deaf (TDD or TTY) or Telecommunication Relay Services (TRS) is available to inmates for outside communication upon request.” IDP 100.610.004 (Subject: Telephone System/Service; Effective Date: 3/7/16), provides information regarding TDD calls. General Order 4010.10 (Subject: Qualified Interpreter, Effective Date: 4/12/11) states that, “Members needing the assistance of an interpreter shall contact their supervisor to receive authorization. Upon approval, the member will contact the qualified interpreter through Relay Services for the Hearing Impaired. This service provides qualified sign language and oral interpreting services, as needed, twenty-four (24) hours a day.” It also states that, “Those individuals that are deaf, hearing or speech impaired will be provided access to a text telephone (TDD or TTY) or Telecommunications Relay Service (TRS).”

The IRCSO did not fully explain why these services and accommodations were not provided to Complainant. Indeed, although the IRCSO’s communication disability-related written policies and procedures appeared to track relevant legal requirements under the ADA, the IRCSO’s policies and procedures as implemented raised concerns that the IRCSO’s methods of administration could violate the ADA in their failure to ensure that communication with individuals with hearing disabilities is equally as effective as communication with people without disabilities. Importantly, the IRCSO appeared to have been under a prior, incorrect assumption that it was only required to provide an ASL interpreter for custodial interrogations.

In accordance with the OCR's preliminary investigatory findings and telephonic provision of technical assistance, the IRCISO proactively adopted and implemented ameliorative policy, procedural, and training-related changes. The IRCISO has updated General Order 4031.00 to reflect changes in the IRCISO's policy regarding handcuffing techniques to allow for handcuffing deaf and hearing disabled individuals in the front predicated upon officer safety. See 4031.00.III.B.2(d) ("The objective in this regard is to minimize the effect of prohibiting the arrestee the opportunity to communicate either via sign language or with pen and paper. Reasonable accommodation should be provided."); see also IDP 900.07.01. The IRCISO has also posted signs with recognizable hearing impaired and TDD/TTY symbols in conspicuous locations throughout the IRCISO sites (i.e., jail booking, jail lobby, visitation lobby, human resources, Sheriff's administration building), and has further programed its visitation video monitors to display such infographics. Further, the IRCISO now includes an expanded ADA-compliance statement in its Inmate Handbook and has implemented a new annual training for every sworn officer, which discusses ADA topics and quizzes officers on ADA-compliant practices. Importantly, responding officials have also expressed their commitment to continuing and expanding the ADA-related information that the IRCISO provides to its staff, inmates, and the public.

II. Analysis

The OCR is responsible for enforcing Title II of the 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 contains a similar provision prohibiting discrimination by recipients of federal funding. See 29 U.S.C. § 794.

The ADA requires that Title II entities communicate effectively with people who have communication disabilities with the goal of ensuring that communication with people with these disabilities is equally effective as communication with people without disabilities. Unlike Title III entities, which are only *encouraged* to consult with the person with a disability to discuss what aid or service is appropriate, the ADA *requires* that Title II entities give primary consideration to the choice of aid or service requested by the person who has a communication disability. A Title II entity must honor the person's choice, unless it can demonstrate that another equally effective means of communication is available, or that the use of the means chosen would result in a fundamental alteration or in an undue burden. If the choice expressed by the person with a disability would result in an undue burden or a fundamental alteration, the public entity still has an obligation to provide an alternative aid or service that provides effective communication if one is available.

The changes adopted by the IRCISO during the course of our investigation ameliorate the OCR's preliminary concerns that the IRCISO's methods of administration could violate the ADA in their failure to ensure that communication with individuals with hearing disabilities is equally as effective as communication with people without disabilities. The IRCISO has confirmed that it has not received any complaints regarding effective communication since Complainant's contact, and with the continuing implementation of its ADA-compliance policies and expanding provision of ADA-related information and trainings, the OCR does not have concerns that the IRCISO's methods of administration will violate the ADA going forward.

III. Conclusion

Based on the foregoing, the OCR concludes that the evidence does not support a finding that Respondent's methods of administration violate federal civil rights laws enforced by the OCR. The

OCR is closing this Complaint with a finding of no violation. The OCR's findings contained herein are limited to the specific facts of this matter and do not preclude the DOJ from taking additional appropriate action to evaluate Respondent's compliance with any laws that we enforce. Additionally, closing this Complaint does not affect Respondent's obligation to comply with all applicable federal laws and regulations to which Respondent remains subject.

We emphasize that Respondent has a continuing obligation under the ADA and Section 504 to ensure that it is not excluding individuals with disabilities from its services, programs, or activities or otherwise discriminate against individuals on the basis of a disability. Specifically, the OCR emphasizes the importance of Respondent's provision of auxiliary aids and services, such as qualified ASL interpreters, to ensure that the IRCISO engages in effective communication with members of the public who are attempting to avail themselves of the citizen complaint process. Pictograms and communication assessment forms are often helpful in terms of assessing what auxiliary aids and services the qualified individual desires.² Such materials should clarify that these aids and services are provided free of charge by the IRCISO. To ensure that interpreter services are provided as soon as possible, Respondent should maintain contract with qualified interpreter agencies to ensure that services will be available on a priority basis.

Thank you for cooperating with our investigation.

Sincerely,

X



Michael L. Alston
Director
Signed by: MICHAEL ALSTON

CC: Undersheriff James Harpring, Indian River County Sheriff's Office (via email only)

² The August 2, 2018 Settlement Agreement between the DOJ and the Philadelphia Police Department, available at https://www.ada.gov/ppd_sa.html, provides sample pictograms and a model communication assessment form.