



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

Washington, D.C. 20531

June 15, 2012

Glenn B. Redick
Chief Litigation Attorney
Columbus City Attorney's Office
90 West Broad Street
Columbus, OH 43215

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

Dear Mr. Redick:

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 Municipal Court (FCMC), in connection with the administrative Complaint that [REDACTED] (Complainant) has filed against the FCMC. In his Complaint, the Complainant, who is deaf, alleges that the FCMC discriminated against him based on disability when it failed to procure the services of a sign language interpreter at the time of his initial arraignment hearing.

The OCR has completed our review of the documentation provided by both the FCMC 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 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 Franklin County Sheriff's Office (FCSO). On the morning of Saturday, March 13, 2010, FCSO deputies took the Complainant to the FCMC for an arraignment hearing before Judge [REDACTED]. However, there were no sign language interpreters present at the FCMC, and Judge [REDACTED] continued the arraignment hearing until Monday, March 15, when an interpreter could be present. The FCSO deputies transported the Complainant back to the FCCC, where he remained detained until Monday morning. When the Complainant arrived at

the FCMC on Monday morning for the re-scheduled arraignment hearing, a sign language interpreter was present. Judge [REDACTED] conducted the arraignment hearing and set bond, and the Complainant was released from the FCCC on Monday afternoon. The Complainant asserts that the FCMC discriminated against him based on his disability when it failed to have a sign language interpreter present at the initial March 13 arraignment hearing, resulting in the arraignment hearing being continued until March 15 and the Complainant being detained at the FCCC for several additional days.

In the FCMC's March 25, 2011, and February 22, 2012, responses to the OCR's Notice of Discrimination Complaint and Data Requests (Data Responses), the FCMC acknowledged that it did not provide the Complainant with an interpreter at his initial arraignment hearing on Saturday, March 13, 2010, but stated that it was unable to immediately procure the services of an interpreter because the hearing occurred on a weekend. According to the FCMC, it did not become aware that the Complainant needed a sign language interpreter until Saturday morning. The FCMC explained that because of the limited need for sign language interpreters, the FCMC does not station a full-time sign language interpreter at the FCMC; rather, at the time of the Complainant's court appearances, the FCMC, through the City of Columbus, had a contract in place with Reliable Interpreting Agency, LLC to request and obtain the services of certified sign language interpreters as necessary.^{1,2} The FCMC stated that once the FCMC discovers that a party to a case is deaf or hard of hearing, if there is sufficient time, the FCMC contacts and obtains the services of a contract sign language interpreter for that court session; however, if the time is limited, the FCMC continues the matter to the next available court date. The FCMC estimated that one hour is generally a sufficient amount of time to obtain the services of an interpreter, and that it continues a proceeding due to lack of availability of an interpreter approximately once in one hundred incidents. According to the FCMC, it generally does not have advance notice that a party to a case is deaf or hard of hearing.

In regard to the Complainant's allegations, the FCMC explained that Saturday morning court proceedings are held solely for the purpose of setting bail for individuals who are in jail and are limited in duration to the time it takes to conduct the necessary proceedings. Accordingly, the FCMC stated that Judge [REDACTED] did not attempt to obtain an interpreter on Saturday morning when she discovered that the Complainant is deaf because the court proceedings would have been over and the Complainant returned to jail before an interpreter would have arrived at the FCMC, even assuming that an interpreter could have been located. The FCMC noted that interpreters are not as readily available on the

¹ In its Data Responses, the FCMC explained that once a judge discovers that an individual requires a sign language interpreter, the judge or another court employee will contact the FCMC Assistant Court Administrator, who will then contact the agency that the FCMC is contracting with to request an interpreter. The FCMC indicated that it provided sign language interpreters for 193 deaf or hard of hearing individuals in 2009, and for 165 deaf or hard of hearing individuals in 2010.

² Based on the FCMC's Data Responses, the OCR understands that the FCMC currently has contracts in place for sign language interpreting services with the following three agencies: Reliable Interpreting Agency, LLC; Affordable Language Services; and Hallencross and Associates, LLC.

weekends as they are during the week, as during the week there are numerous judges working at both the FCMC and the nearby Franklin County Court of Common Pleas and therefore there is often an interpreter working close by, and that on Saturdays there is only one judge working at the FCMC.³ The FCMC indicated that Judge ██████ notified the clerk's office that a sign language interpreter was needed for the hearing re-scheduled for March 15, and that the actions of Judge ██████ on March 13 were consistent with established policy.

State of Ohio and FCMC Policies and Procedures Relevant to the Allegations

The use of interpreters in Ohio courts is governed by Ohio Rev. Code Ann. § 2311.14 (2012), which states that whenever a party or witness in a legal proceeding cannot readily understand or communicate because of a hearing impairment, the court shall appoint a qualified interpreter to assist such person. The Supreme Court of Ohio, Judicial & Court Services Division, operates an Interpreter Services Program, which provides technical assistance and training for interpreters and courts throughout the Ohio judicial system on the proper role and use of foreign and sign language interpreters in judicial proceedings. The Interpreter Services Program also assists courts in developing policies, procedures, and standards to provide deaf and hard of hearing individuals with equal access to the courts. See, <http://www.sconet.state.oh.us/JCS/interpreterSvcs/default.asp>. In furtherance of its duties, the Supreme Court of Ohio has published *Interpreters in the Judicial System: a Handbook for Ohio Judges* (Feb. 2008), available at http://www.sconet.state.oh.us/Publications/interpreter_services/ISHandbook.pdf, which explains that state and federal law require courts to provide professionally qualified interpreters to limited English proficient and deaf individuals, and provides guidance on the role of interpreters, how courts may assess the qualifications of prospective interpreters, and how to effectively work with interpreters. The Supreme Court of Ohio has also published *Working with Interpreters for Deaf or Hard of Hearing Persons in the Courtroom: a Bench Card for Judges* (May 2007), available at <http://www.sconet.state.oh.us/JCS/interpreterSvcs/benchcard.pdf>, which advises judges that they are required to ask deaf or hard of hearing individuals what types of accommodations they need; states that if a sign language interpreter is requested judges should use an impartial, certified interpreter; and provides guidance for judges on how to facilitate communication in an interpreted proceeding. Neither of these documents discusses the timeframe during which courts should procure interpreting services.

The FCMC does not have any additional policies and procedures in place specifically addressing communicating with deaf or hard of hearing individuals participating in FCMC proceedings.

³ In its Data Response, the FCMC said that the FCMC and the Franklin County Court of Common Pleas use the same agencies for interpreting services.

Legal Analysis

Title II of the Americans with Disabilities Act of 1990 (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 FCMC 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. Furthermore, the United States Supreme Court has explicitly determined that state courts must adhere to the requirements of the ADA, and that “ordinary considerations of cost and convenience alone cannot justify a State's failure to provide individuals with meaningful access to the courts.” *Tennessee v. Lane*, 541 U.S. 509, 532-533 (2004).

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).⁴ 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 on-site or through video remote interpreting services, 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

⁴ 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.

“[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.”).

In the context of court proceedings, the DOJ's regulations caution that without appropriate auxiliary aids and services deaf or hard of hearing individuals are "denied an opportunity to participate fully in the judicial process, and denied benefits to the judicial system that are available to others." 28 C.F.R. pt. 35, app. A, at 640 (2011). The DOJ technical assistance materials indicate that, "[b]ecause of the importance of effective communication in State and local court proceedings, special attention must be given to the communications needs of individuals with disabilities involved in such proceedings. Qualified interpreters will usually be necessary to ensure effective communication with parties, jurors, and witnesses who have hearing impairments and use sign language." 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.

It is important to note that in order to be effective, auxiliary aids and services must be provided in a timely manner. 28 C.F.R. § 35.160(b)(2) (2011). Neither the DOJ's regulations implementing the ADA and Section 504 nor its published ADA technical assistance materials provide any guidance regarding what is considered to be "timely."

Based on the OCR's review of the information that has been submitted by both the Complainant and the FCMC, the OCR finds that under the particular circumstances at issue in the Complaint, the evidence is insufficient to demonstrate that the FCMC's failure to provide the Complainant with an interpreter at his initial arraignment hearing and the resulting continuance of the hearing until Monday morning 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. In the context of court proceedings, appropriate auxiliary aids or services will usually involve a qualified sign language interpreter. The FCMC has procedures in place to obtain the services of a qualified contract sign language interpreter to ensure that deaf or hard of hearing individuals have an equal opportunity to participate in court proceedings.

In the instant case, the FCMC asserts that the limited duration of the Saturday morning court session prevented it from being able to secure the services of an interpreter during the court session, as contract interpreters are generally not present nearby during the brief Saturday morning court session. Upon discovering that the Complainant was deaf, the judge continued the hearing for the next business day and took steps to ensure that an interpreter would be present during that hearing. Unfortunately, due to the circumstances of the initial hearing occurring on a Saturday morning, this resulted in the Complainant being detained until Monday morning.

According to the FCMC's Data Response, since January 1, 2009, no individuals have filed complaints with the FCMC alleging discrimination based on disability or alleging that the FCMC failed to effectively communicate with a deaf or hard of hearing individual. The Complainant provided the OCR with the names and contact information of two other deaf individuals who allegedly did not receive the services of an interpreter during court proceedings involving felony cases; however, when speaking with the OCR, neither of these individuals could name the specific court that their hearing were held at, and the OCR understands that both the FCMC and the Franklin County Court of Common Pleas have jurisdiction to conduct preliminary hearings in felony cases. Accordingly, the OCR could not confirm that these instances occurred at the FCMC.

In these limited circumstances, where relevant guidance and legal authority, along with the policies and procedures governing the FCMC, are silent as to what constitutes the "timely" provision of auxiliary services, the evidence is insufficient to demonstrate that the FCMC's failure to immediately obtain an interpreter at the time of the initial arraignment hearing and the continuance of the hearing until Monday morning violated the ADA or Section 504.

The OCR would like to stress that our finding is limited to the particular circumstances presented in the Complaint. In the future, the FCMC should make every attempt to immediately contact and secure the services of an interpreter when a deaf or hard of hearing individual is a party to a case. This is especially important during Saturday court proceedings, when the failure to immediately secure the services of an interpreter will result in the individual spending the remainder of the weekend in jail. In its Data Responses, the FCMC indicated that it does not currently have video technology in place to provide remote sign language interpreting services. The OCR strongly recommends that the FCMC explore the possibility of procuring video technology that will allow it to obtain video remote interpreting (VRI) services from qualified interpreters who are located off-site. A VRI service is an interpreting service that uses video conference technology over dedicated lines or wireless technology offering high-speed, wide-bandwidth video connection. 28 C.F.R. § 35.104 (2011). The DOJ's regulations list several standards that a VRI should adhere to. *See* 28 C.F.R. § 35.160(d) (2011). The use of VRI services may be an effective alternative to in-person interpreters in those situations where the FCMC is unable to immediately procure the services of an in-person interpreter, such as during Saturday court proceedings. The OCR also recommends that the FCMC reach out to the Franklin County Sheriff's Office and other arresting law enforcement agencies within the jurisdiction of the FCMC to develop procedures for the arresting law enforcement agency to notify the FCMC when it arrests a deaf or hard of hearing individual, thereby providing the FCMC with advance notice that an interpreter will be needed during the initial court appearance. Actions such as these will prevent the incident discussed in the present Complaint from occurring in the future and will help prevent the appearance that the FCMC is not providing deaf or hard of hearing individuals with equal opportunity to participate in judicial proceedings.

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

Sincerely,

/s/

Michael L. Alston

Director