



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

Washington, D.C. 20531

February 5, 2019

Elizabeth Rae-O'Donnell
Cummings, McClorey, Davis & Acho, P.L.C.
17436 College Parkway
Livonia, MI 48152

Re: Notice of Findings
[REDACTED] v. 3B Dist. Ct. (18-OCR-0890)

Dear Ms. Rae-O'Donnell:

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 3B District Court (Court), in connection with the administrative Complaint that [REDACTED] (Complainant) filed against the Court. In his Complaint, the Complainant, who has profound hearing loss, alleged that the Court discriminated against him based on disability when it failed to consistently procure the services of a sign language interpreter for his court appearances. The Complainant also alleged that the Court failed to ensure that an interpreter was provided during mandatory drug and alcohol testing.

The OCR has completed our review of the documentation provided by both the Court and the Complainant and has determined that there is insufficient evidence of a violation of the Americans with Disabilities Act of 1990 (ADA), Section 504 of the Rehabilitation Act of 1973 (Section 504), and their implementing regulations. Our findings are set forth below for your review.

I. Factual Background

A. The Complainant's Allegations

The Complainant has profound hearing loss in both ears, and communicates with others by using hearing aids, through American Sign Language (ASL), and through lip reading. Even with his hearing aids, the Complainant has a very low degree of hearing, and the hearing aids are only effective if someone is standing directly in front of him and there is no background noise. The Complainant also has a vision impairment and uses prescription eyeglasses to see.

On [REDACTED], the Complainant was arrested by the St. Joseph County Sheriff's Department (SJCSD) and charged with domestic violence and disturbing the peace. Immediately

following his arrest, the SJCSJ transported him to the St. Joseph County Jail (Jail) operated by the SJCSJ. During the course of the Complainant's arrest, the SJCSJ took possession of the Complainant's eyeglasses and hearing aids and did not return them to the Complainant during his period of detention.

In the afternoon of [REDACTED], a magistrate with the Court conducted an arraignment and bond hearing via video while the Complainant was at the Jail. Because the Complainant did not have his eyeglasses, he could not clearly see the magistrate. The Complainant repeatedly asked for his hearing aids and eyeglasses but the SJCSJ denied his requests, and neither the SJCSJ nor the Court provided the Complainant with an ASL interpreter during the video arraignment. A SJCSJ deputy provided the Complainant with a written list of his rights, but then ripped the list in half to transcribe portions of what the magistrate was saying. When the magistrate asked the Complainant if he understood the charges against him, the Complainant replied, "No, I cannot hear you, I cannot see and I need an interpreter."

The Complainant appeared for a hearing on [REDACTED] and no interpreter was present, and instead the Court attempted to use his father to interpret and provided his father with a document and told him to instruct the Complainant to sign it. The Court had to re-schedule several subsequent hearings in connection with this case due to the Court's failure to procure an interpreter, and when an interpreter was present the interpreter was often late.

On [REDACTED] the SJCSJ arrested the Complainant for operating a vehicle while intoxicated. The Complainant appeared for the arraignment hearing on [REDACTED]; however, the Court had been unable to obtain an interpreter and re-scheduled the hearing for [REDACTED]. The Court had to re-schedule the [REDACTED] hearing due to another failure to procure an interpreter.

As part of his conditions of probation, the Court ordered the Complainant to report several times a week to the Three Rivers Day Reporting Center for drug and alcohol testing. The Three Rivers Day Reporting Center is operated by the Twin County Community Probation Center, Inc., a privately held company. The staff at the Three Rivers Day Reporting Center did not provide the Complainant with an ASL interpreter any time he reported for testing, and the Complainant had to read the staff's lips to know what to do.

B. The Court's Response

The Court responded to the OCR's initial Data Request and subsequent inquiries on June 25, October 22, and October 30, 2018. In the Court's responses, it denied that it discriminated against the Complainant on the basis of his hearing impairment or denied him equal access to Court proceedings. The Court indicated that if a deaf or hard of hearing individual requires an accommodation to participate in Court proceedings, the individual may notify the Court in advance, including by completing the Court's Request for Reasonable Accommodations and Response form. At other times, a law enforcement officer may notify the Court of the need for an interpreter prior to a court proceeding. The Court said that at times it may not have advance

¹ In his Complaint to the OCR, the Complainant alleged that this hearing occurred on [REDACTED]. However, based on records and information provided by the Court, it appears that the hearing occurred on [REDACTED].

notice of an individual's need for an accommodation, but that Court personnel will independently recognize that an individual needs an accommodation. Once the Court becomes aware of the need for an accommodation, the Court's scheduling clerk will arrange for the appropriate service for future Court proceedings. The Court stated that it engages in an interactive dialogue with a person with a disability to determine the appropriate accommodation, and that accommodations for a deaf or hard of hearing individual may include a certified ASL interpreter, assisted technology, or note taking.

According to the Court, it only allows friends or family members to provide interpretation for a deaf or hard of hearing individual during a court proceeding if the Court did not have advance notice of an individual's need for an interpreter. The Court said that in those instances, the Court would only address issues such as obtaining the correct contact information, and would adjourn the proceedings until a certified interpreter was available for a future proceeding.

The Court stated that at the time of the Complainant's court appearances discussed above, the Court primarily relied upon the interpreter service Deaf Link to provide ASL interpreting services. The Court also maintained a list of other individuals who are ASL interpreters and would attempt to contact these individuals if Deaf Link was not available. The Court said that upon information and belief, there were very few available courtroom-certified ASL interpreters in the region during the time of the Complainant's court appearances.

According to the Court, the Michigan Supreme Court changed the requirements for courtroom-certified ASL interpreters around the time of the Complainant's underlying criminal cases. The Court subsequently began using the Michigan Online Interpreter System to locate an ASL interpreter, which contains a list of certified ASL interpreters who are qualified to interpret in Michigan courts. The Court said that as of October 22, 2018, there were approximately 126 ASL interpreters listed in the Michigan Online Interpreter System who are eligible to interpret in court proceedings.

As for the Complainant's [REDACTED] arrest, the Court indicated that it did not become aware of the Complainant's hearing impairment and need for an ASL interpreter until the [REDACTED] video arraignment with the magistrate, and that the magistrate therefore entered a not guilty plea on his behalf. The Court provided the OCR with video footage of the [REDACTED] arraignment, which shows that the Complainant was wearing his eyeglasses during the arraignment. The magistrate verbally asked the Complainant if he could see him and the Complainant verbally replied yes, but said that he is not going to be able to understand what the magistrate was saying. The SJCS deputy who was present said that he would repeat what the magistrate said, and the Complainant nodded; the deputy proceeded to repeat what the magistrate said throughout the course of the arraignment. The magistrate asked the Complainant if he read and understood the Advice of Rights, and the Complainant said yes. The magistrate then started to explain what the Complainant was charged with and as the deputy repeated what he said the Complainant asked the deputy to write it down, which he did. The Complainant read what the deputy wrote and then nodded his head and said "all right." The magistrate said he would not take a guilty plea from the Complainant because he wanted him to completely understand what the magistrate was communicating, and he entered a not guilty plea on the Complainant's behalf. The magistrate asked the Complainant if he needed a sign language interpreter for the courtroom, and the

Complainant said yes. The magistrate then told the deputy to have the Complainant read the written bond conditions and to go over them with the Complainant to make sure he understood them, which the deputy was beginning to do when the video concluded.

As for the Complainant's subsequent court appearances in connection with this case, the Court said that it initially scheduled the pretrial hearing for [REDACTED] and immediately contacted Deaf Link to obtain an interpreter for the hearing, but a Deaf Link interpreter was not available. The Court provided the OCR with the Case History Report for the court actions associated with the Complainant's [REDACTED] arrest, along with available invoices submitted by Deaf Link interpreters. These documents indicate that the Complainant appeared for the pretrial hearing on [REDACTED], and that the Court told him at that time that it could not obtain an interpreter for that date and that the pretrial hearing was re-scheduled until [REDACTED]. According to the Court's responses and the Case History report, the Court contacted Deaf Link to request an interpreter for [REDACTED], but an interpreter was not available, and the Court re-scheduled the pretrial hearing again until [REDACTED], when an interpreter was available. The Court called the Complainant's [REDACTED] on [REDACTED] and told her that the hearing was re-scheduled until [REDACTED]. The Court held the pretrial hearing on [REDACTED], and an interpreter was present.

The Court initially scheduled the next hearing for [REDACTED] and requested an interpreter from Deaf Link, but an interpreter was not available, and the Court re-scheduled the hearing for [REDACTED], when an interpreter was available. The Court held the hearing on [REDACTED] and an interpreter was present. The Court then scheduled the next hearing for [REDACTED]. On [REDACTED] an interpreter was present, and the Complainant pled guilty to disorderly conduct.

In regard to the proceedings stemming from the Complainant's [REDACTED], arrest, the Court again provided the OCR with the relevant Case History Report and available invoices from Deaf Link interpreters. These documents and the information provided by the Court indicate that the Court initially scheduled the arraignment for [REDACTED], and the Complainant appeared on that date, but that Deaf Link had notified the Court on [REDACTED] that an interpreter was not available. The Case History Report indicates that the Court explained to the Complainant that no interpreter was available and that it was re-scheduling the arraignment for [REDACTED]. The Case History Report further indicates that the Court had the Complainant read the Advice of Rights and that the Complainant understood them. The Court held hearings on [REDACTED] and June [REDACTED], and an interpreter was present. The Complainant pled guilty on [REDACTED] to operating a vehicle while intoxicated.

For the most part, the Case History Report and invoices from the Deaf Link interpreters do not indicate what time an interpreter arrived in court and whether the Complainant had to wait for an interpreter to arrive. According to the Court, for the instances when Deaf Link was not able to provide an interpreter for the Complainant's court proceeding, the Court contacted other ASL interpreters from its list of known interpreters. The Court said that due to the short notice, no other interpreters were available. The Court indicated that when it re-schedules a court proceeding, its normal practice is to mail the parties the new court date.

The Court told the OCR that it has only serviced one deaf or hard of hearing individual other than the Complainant since January 1, 2016. The Court indicated that this individual, by choice,

has communicated with the Court by using his own hearing devices. The Court further said that it has not received a complaint from any individual other than the Complainant alleging disability discrimination by the Court.

In responding to the OCR's inquiries, the Court informed the OCR that the Complainant also filed a complaint with the Michigan Department of Civil Rights (MDCR) concerning the same allegations raised with the OCR regarding the Complainant's court appearances, and that the MDCR conducted an investigation into the matter. The Court provided the OCR with a copy of the MDCR's investigative file, which it obtained from the MDCR. Based upon all of the documentation that the MDCR gathered, which included much of the documentation that the Court submitted to the OCR, on March 1, 2017, the MDCR determined that the Court made reasonable attempts to secure an ASL interpreter for court proceedings. The MDCR further found that the Court has taken "adjustive" action by implementing new procedures to ensure that ASL interpreters can be effectively obtained for future court proceedings. During the course of the MDCR's investigation, the Court told the MDCR that due to Deaf Link's inability to provide interpreters as needed, the Court now uses the Michigan Online Interpreter System.

Lastly, in regard to the Complainant's allegation that the staff at the Three Rivers Day Reporting Center did not provide him with an ASL interpreter when he reported for drug and alcohol testing, the Court said that it does not have any oversight over the reporting center or the Twin County Community Probation Center, Inc. It also said that it has no contracts or written agreements with these agencies. Because of this, the Court said it is unable to provide the OCR with requested information on how staff at the Three Rivers Day Reporting Center communicate with individuals who are deaf or hard of hearing. The Court said that it does allow individuals to complete drug and alcohol testing at testing centers other than the Three Rivers Day Reporting Center, but that it is up to the individual to ask the Three Rivers Day Reporting Center about other testing centers.

II. Local Policies and Procedures Relevant to the Allegations

The use of interpreters in Michigan courts is governed by the State of Michigan Deaf Persons' Interpreters Act.² This Act states that in any action before a court where a deaf individual is a participant, the court shall appoint a qualified interpreter to interpret the proceedings.³ A "qualified interpreter" is defined as a person who is certified through the national registry of interpreters for the deaf or through the State of Michigan.⁴ According to the Act, a deaf individual shall provide reasonable notice to a court of the need for an interpreter before a court proceeding.⁵ When a court knows that a deaf individual is or will be coming before it, it shall notify the individual of the individual's right to an interpreter.⁶

² MICH. COMP. LAWS § 393.501-.509 (2018).

³ *Id.* at § 393.503(1).

⁴ *Id.* at § 393.502(f).

⁵ *Id.* at § 393.504(1).

⁶ *Id.* at § 393.504(2).

In September 2015, the Michigan Supreme Court issued an administrative order imposing new requirements on Michigan courts to ensure compliance with the ADA.⁷ This Order required each trial court to take the following actions: adopt a local administrative order that describes the procedures for a person to request an accommodation under the ADA; designate a court employee to be the court's ADA coordinator; and ensure that the court's chief judge and ADA coordinator participate in training regarding the court's obligations under the ADA and the Deaf Persons' Interpreters Act.⁸

In accordance with the Supreme Court's administrative order, the Court developed a local order stating the Court's intention to ensure that qualified individuals with disabilities have equal and full access to the judicial system, and setting forth the procedures for individuals to request an accommodation under applicable federal and state law.⁹ According to this order, individuals should request an accommodation in writing using the Court's Request for Reasonable Accommodations and Response form, or orally as the Court may allow.¹⁰ The order advises individuals to submit written requests to the Court's listed ADA coordinator, and indicates that requests should be made as far as possible in advance of the court proceeding.¹¹ The order notes that accommodations may include furnishing qualified individuals with disabilities auxiliary aids and services at no charge, including qualified interpreters.¹²

Additionally, the Court receives technical assistance and training on ensuring access to individuals with disabilities from the Michigan Supreme Court's State Court Administrative Office (SCAO), which has administrative oversight over all state courts. In furtherance of its duties, the SCAO published and routinely updates a handbook on providing accessibility and accommodation for individuals with disabilities.¹³ The handbook provides an overview of the ADA and its requirements, including ensuring effective communication during court proceedings, and states that when information being communicated is complex or lengthy and an individual who is deaf uses sign language to communicate, a qualified sign language interpreter is necessary for effective communication.¹⁴ The handbook notes that it may be possible to provide effective communication to a deaf individual through written notes, provided the individual understands written English, the hearing is brief, the individual is represented by counsel and can communicate with his or her counsel, and the individual is able to participate effectively in the hearing.¹⁵ The handbook further indicates that in most situations, allowing

⁷ Admin. Order No. 2015-5 (Sept. 16, 2015), [https://courts.michigan.gov/Courts/MichiganSupremeCourt/rules/Documents/HTML/AOs/AOs-Responsive%20HTML5/AOs/Administrative Orders/AO No 2015-5 %E2%80%9494 Adoption of Administrative Order Requiring Trial htm](https://courts.michigan.gov/Courts/MichiganSupremeCourt/rules/Documents/HTML/AOs/AOs-Responsive%20HTML5/AOs/Administrative%20Orders/AO_No_2015-5_%E2%80%9494_Adoption_of_Administrative_Order_Requiring_Trial.htm).

⁸ *Id.*

⁹ Forty-Fifth Judicial Circuit of Michigan, Requests for Accommodations by Persons with Disabilities, St. Joseph County Administrative Order, 3B District Court 2015-09J (Nov. 16, 2015).

¹⁰ *Id.* at 2.

¹¹ *Id.*

¹² *Id.*

¹³ SCAO, A Handbook for Michigan Courts on Accessibility and Accommodation for Individuals with Disabilities (March 2018).

¹⁴ *Id.* at 23.

¹⁵ *Id.*

friends or family members to interpret for a deaf individual is inappropriate because of concerns over confidentiality or conflict of interest.¹⁶

On July 21, 2016, the SCAO issued a Memorandum to all judges, court administrators, probate registers, and county clerks, advising courts that effective July 7, 2017, all qualified interpreters who work in the courts must have a valid legal endorsement from the MDCR.¹⁷ The Memorandum discussed the requirements for an interpreter to be considered qualified by the MDCR, including the requirement to be listed in the Michigan Online Interpreter System.¹⁸

III. 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.”¹⁹ 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.²⁰ 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.²¹ Since the Court 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.”²²

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.”^{23,24} 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.²⁵ Under the ADA, a public entity is required to provide appropriate auxiliary aids and services where

¹⁶ *Id.* at 25.

¹⁷ Michigan Supreme Court, SCAO, Americans with Disabilities Act: ASL Interpreter Policies, Memorandum (July 21, 2016).

¹⁸ *Id.*

¹⁹ 42 U.S.C. § 12132 (2018).

²⁰ 29 U.S.C. § 794 (2018).

²¹ 42 U.S.C. § 12102; 29 U.S.C. § 705(9)(B).

²² *Tennessee v. Lane*, 541 U.S. 509, 532-33 (2004).

²³ 28 C.F.R. § 35.160(a)(1) (2018).

²⁴ 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.

²⁵ 28 C.F.R. § 42.503(e) (2018).

necessary to afford individuals with disabilities an equal opportunity to participate in, and enjoy the benefits of, a service, program or activity.²⁶ Auxiliary aids and services include 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.²⁷ 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

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."²⁹ 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."³⁰

The DOJ's regulations implementing the ADA also make clear that when a court refers an individual with a disability to a court-ordered program, the program must provide effective communication, and the court should only refer the individual to a program that provides effective communication.³¹ No individual with a disability should be denied access to the benefits of a court-ordered referral program because the program is unable to provide effective communication.³²

It is important to note that in order to be effective, auxiliary aids and services must be provided in a timely manner.³³ Neither the DOJ's regulations implementing the ADA and Section 504 nor its published ADA technical assistance materials provide 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 Court, the OCR finds that the evidence is insufficient to demonstrate that the Court failed to take appropriate steps to ensure effective communication with the Complainant in violation of the ADA or Section 504. As an initial matter, the Complainant's hearing impairment constitutes

²⁶ 28 C.F.R. § 35.160(b)(1).

²⁷ 28 C.F.R. § 35.104.

²⁸ 28 C.F.R. § 35.160(b)(2). *See also* DOJ, THE AMERICANS WITH DISABILITIES ACT: TITLE II TECHNICAL ASSISTANCE MANUAL GOVERNING STATE AND LOCAL GOVERNMENT PROGRAMS AND SERVICES, II-7.1000 (Nov. 1993) (stating that 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.").

²⁹ 28 C.F.R. pt. 35, app. A, at 676 (2018).

³⁰ DOJ, THE AMERICANS WITH DISABILITIES ACT: TITLE II TECHNICAL ASSISTANCE MANUAL GOVERNING STATE AND LOCAL GOVERNMENT PROGRAMS AND SERVICES, II-7.1000.

³¹ 28 C.F.R. pt. 35, app. A, at 676.

³² *Id.*

³³ 28 C.F.R. § 35.160(b)(2).

a disability under the ADA and Section 504. 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. At the time of the Complainant's Court appearances, the Court had procedures in place to obtain the services of a qualified ASL interpreter from Deaf Link to ensure that deaf or hard of hearing individuals have an equal opportunity to participate in court proceedings.

In regard to the [REDACTED] video arraignment hearing in connection with the Complainant's [REDACTED] arrest, the Court did not receive notice of the Complainant's need for an ASL interpreter until the arraignment. Upon learning of the Complainant's hearing impairment, the magistrate attempted to communicate with the Complainant by having a SJCS deputy verbally repeat and write down what the magistrate said, and by providing the Complainant with written notices of his rights and bond conditions. The video footage shows that the Complainant was wearing his eyeglasses during the arraignment and presumably could clearly see the judge along with the deputy's writings. The OCR's review of the video arraignment appears to demonstrate that the Complainant understood what he was being charged with and what his rights were. However, as a precaution that the Complainant did not fully understand what the magistrate was communicating, the magistrate entered a not guilty plea on the Complainant's behalf. Overall, it appears that the magistrate took appropriate steps to effectively communicate with the Complainant during this hearing.

The records provided by the Court indicate that the Court had to re-schedule several court appearances in connection with his two criminal cases, including the [REDACTED], pretrial hearing in connection with his [REDACTED] arrest and the [REDACTED], arraignment in connection with his [REDACTED] arrest, both of which the Complainant appeared for. While the OCR has concerns regarding the number of times that the Court had to re-schedule a proceeding due to an inability to procure a Deaf Link interpreter, the evidence demonstrates that the Court did make an attempt to procure an interpreter for each court appearance, utilizing the limited resources that were available at that time. In regard to the Complainant's allegation that the Court attempted to use his father to interpret during the [REDACTED] hearing and instructed his father to have the Complainant sign a document, based on the information provided by the Court it appears that may have actually occurred during the [REDACTED] arraignment. Regardless, the Court did not attempt to extensively communicate with the Complainant during either the [REDACTED] or [REDACTED] interaction and re-scheduled both proceedings until a date when an interpreter could be present.

Overall, given the Court's resources at the time of the Complainant's criminal cases, the OCR agrees with the MDCR's determination that the Court took reasonable steps to procure an interpreter for the Complainant's court proceedings. It appears that the Court took reasonable steps to comply with the ADA and Section 504 and their implementing regulations, as well as local law and policy. Since the time of the Complainant's criminal cases, the Court has modified its procedures for obtaining interpreter services, which should increase the number of qualified interpreters that are available and reduce the need to re-schedule a proceeding due to the lack of an available interpreter. The Court should continually evaluate the resources that it has in place

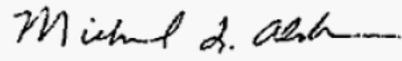
to communicate with deaf or hard of hearing individuals and make any necessary modifications to ensure that it is consistently providing effective communication and that deaf or hard of hearing individuals are not experiencing undue delays in receiving interpreter services.

The OCR does have concerns that the Court failed to provide the Complainant with notice that his proceeding had been re-scheduled on at least two occasions, and the Complainant appeared at the Court. The Court should make every effort to notify an individual that a proceeding has been re-scheduled as promptly as possible, and if there is not sufficient time to provide this notice in writing, should attempt to notify the individual through other means (e.g. telephone call, email, text message, etc.).

Lastly, in regard to the Complainant's allegation that the Three Rivers Day Reporting Center did not provide him with an ASL interpreter when he reported for mandatory drug and alcohol testing, the Court stated that it does not have any oversight over the center and does not know how staff communicate with deaf or hard of hearing individuals. However, please be advised that in accordance with the DOJ's regulations, courts should only refer individuals to court-ordered programs or services that it knows can provide effective communication. Accordingly, the Court has an obligation to ensure that it is referring individuals to drug and alcohol testing centers and other service providers that it knows can ensure effective communication. In this particular instance involving the Complainant, there is no evidence that the Complainant was not able to understand what he needed to do or was unable to successfully participate in the drug and alcohol testing. Presumably the testing center did not engage in lengthy, complex communication with the Complainant to explain what he needed to do. Therefore, the evidence is insufficient to demonstrate that the testing center's communication with the Complainant through lip reading was a violation of the ADA or Section 504. However, the Court should identify and compile a list of drug and alcohol testing centers and other service or treatment providers that are able to ensure effective communication with hearing impaired or other disabled individuals. In the future, when the Court orders an individual who requires an accommodation to ensure effective communication to participate in a testing or treatment program, it should provide the individual with information on programs that can provide this effective communication. The Court should not require an individual to identify such programs on his or her own.

Based on the foregoing, the OCR is closing our review of this Complaint. If you have any questions, please contact OCR attorney [REDACTED] at [REDACTED]. The OCR is always available to provide the Court with technical assistance to ensure that its services and activities are fully accessible to individuals under the ADA and Section 504.

Sincerely,

X 

Michael L. Alston

Director

Signed by: MICHAEL ALSTON