



U.S. Department of Justice

Civil Rights Division

*Disability Rights Section - NYA
950 Pennsylvania Ave, NW
Washington, DC 20530*

June 16, 2015

Susan A. Maher
Chief Assistant Attorney General
The Capitol, PL01
Tallahassee, Florida 32399-1050

Re: DJ 204-17M-447
Notice of findings of non-compliance with the obligation to cooperate with the Department of Justice compliance review pursuant to Section 504 of the Rehabilitation Act of 1973

Dear Ms. Maher:

This is to notify you that the U.S. Department of Justice, Civil Rights Division (Department) has determined that the Florida Department of Corrections (Florida DOC) is in non-compliance with its obligations under Section 504 of the Rehabilitation Act of 1973 (Section 504) to cooperate with the Department's investigation and compliance review of alleged disability discrimination at the Tomoka Correctional Institution (Tomoka) in Daytona Beach, Florida. In the event that the Department is unable to reach a voluntary resolution with the Florida DOC within two weeks of the date of this letter, the Attorney General may elect to initiate a lawsuit pursuant to Section 504 to compel access to the Tomoka facility, its relevant personnel, inmates, and documents. *See* 42 U.S.C. § 2000d-1. We would prefer, however, to resolve this matter by working cooperatively with the Florida DOC.

Background and Findings of Fact

On June 26, 2013, the Department notified Tomoka via the enclosed letter (and via e-mail on June 28, 2013) that it was conducting a compliance review to determine whether Tomoka is in violation of Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and the Department's implementing regulations, 28 C.F.R. Parts 41 and Part 42, Subpart G, which apply because the Department provides Federal financial assistance to the Florida DOC.¹ The Department initiated its request for the compliance review in response to multiple complaints that it received alleging that Tomoka does not ensure effective communication for inmates with hearing and vision disabilities, and that Tomoka fails to provide appropriate auxiliary aids and services to inmates with disabilities.

¹ From January 1, 2011, to the present, the Department's Office of Justice Programs (OJP) has awarded Florida DOC seven (7) grants that total \$4,147,986. Six of those grants (totaling \$3,407,626) remain open as of this date. OJP awarded the most recent grant on October 1, 2014, in the amount of \$750,000 for "Pinellas SMART Re-Entry Probation." This grant is scheduled to remain open until September 2017.

By the enclosed letter dated September 19, 2013, you advised that the Office of the Florida Attorney General would represent Tomoka in this matter; you asked if the compliance review was prompted by individual complaints; and you requested information regarding the underlying complaints. In this letter, you also indicated that the Florida DOC would not consent to an on-site visit until the Department provided its legal authority to justify its compliance review. In your September 19, 2013, correspondence, you also enclosed documents that the Department had requested, including policies and procedures pertaining to inmates with disabilities, the orientation handbook for inmate assistance, and the policy and procedure for assignment of inmate assistants. You also indicated that the Florida DOC would provide the Department with “any public record documentation” but would not disclose any confidential information. Finally, you advised the Department that its requests to interview inmates would be handled under the Florida DOC’s rule regarding *Special Visits* and you would coordinate all inmate interview requests.

On November 5, 2013, the Department responded to your September 19, 2013, letter. The Department’s enclosed letter advised that the Department had received complaints that alleged that Tomoka does not adequately ensure effective communication for inmates who have hearing or vision disabilities, and that Tomoka fails to provide appropriate auxiliary aids and services to inmates with disabilities. In its November 5, 2013, response, the Department also outlined the specific statutory and regulatory authorities that authorize the Department to conduct on-site inspections of facilities covered by Section 504. The Department’s November 5, 2013, response reiterated its request to conduct an on-site inspection at Tomoka. Neither you nor anyone at Tomoka or the Florida DOC has responded to the Department’s November 5, 2013, correspondence. The Department has made seven attempts to schedule an on-site visit at Tomoka with the Florida DOC, most recently via e-mail on April 23, 2014. Tomoka and the Florida DOC have ignored each of the Department’s requests since November 2013 to conduct an on-site compliance review.

Florida DOC’s Denial of Access Violates Section 504 – Recommended Remedial Measures

Section 504 prohibits discrimination in Federally-assisted programs on the basis of disability. 29 U.S.C. § 794(a); 28 C.F.R. § 42.503. Section 504 adopts the remedies, procedures, and rights under Title VI of the Civil Rights Act of 1964 (Title VI). 29 U.S.C. § 794(a). The procedural provisions applicable to Title VI (28 C.F.R. §§ 42.106-42.110) apply to Section 504. 28 C.F.R. § 42.530(a). The Department’s Title VI implementing regulations incorporated into the investigatory and compliance review procedures for Section 504 by 28 C.F.R. § 42.530(a), require, among other obligations, that recipients of Federal financial assistance shall permit access by the Department “to such of its books, records, accounts, and other sources of information, and its facilities, as may be pertinent to ascertain compliance....” 28 C.F.R. § 42.106(c).

The Section 504 implementing regulations also require that every application for Federal financial assistance be accompanied by an assurance that the program will be conducted in compliance with all requirements imposed by Section 504. 28 C.F.R. § 42.504. Pursuant to this requirement, the Florida DOC signed assurances that it would

conduct its program in compliance with Section 504 and agreed to permit the Department with access to pertinent information and facilities in order to evaluate its compliance.

Therefore, the Florida DOC's ongoing refusal to cooperate with the Department's request for a compliance review is a violation of Section 504, the implementing regulations, and related assurance agreements.² The Department accordingly notifies you that, absent the Florida DOC's voluntary compliance to correct these violations within two weeks of the date of this correspondence, the Department will conclude that compliance has not been achieved by voluntary means and will recommend to the Attorney General that the Department should initiate civil litigation under Section 504 to compel compliance. 28 C.F.R. §§ 42.108(a)(1) and 42.108(d) .

In the interest of seeking a voluntary resolution without the necessity of litigation, the Department remains open to the Florida DOC's cooperation with the request to conduct an on-site compliance review of Tomoka within thirty (30) days of the date of this correspondence.

Conclusion

Although we would prefer to negotiate a voluntary resolution in this matter, the Attorney General may initiate a lawsuit pursuant to Section 504 if the Florida DOC refuses to voluntarily cooperate with the Department's request to conduct a Section 504 compliance review. 28 C.F.R. §§ 42.108(a)(1) and 42.108(d).

We hope to work with you and appropriate Florida DOC officials towards an amicable resolution regarding the Florida DOC's obligation to permit the Department to conduct its compliance review, including an on-site inspection of the Tomoka facility, and interviews with inmates and appropriate Tomoka personnel. Please contact Trial Attorney Douglas Kern at (202) 616-9664 within two weeks of the date of this correspondence if you are willing to resolve this matter voluntarily.

² Please note that this Letter of Findings is a public document and will be posted on the Civil Rights Division's website.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Rebecca B. Bond', with a long horizontal flourish extending to the right.

Rebecca B. Bond
Chief
Disability Rights Section

Enclosures:

June 26, 2013 correspondence

September 19, 2013 correspondence

November 5, 2013 correspondence