



U.S. Department of Justice

Civil Rights Division

*Disability Rights Section
4 Constitution Square
150 M St., NE
Washington, DC 20530*

July 19, 2023

VIA EMAIL

Ryan Thornell, Director
Ashley Oddo, General Counsel
Arizona Department of Corrections, Rehabilitation and Reentry
701 E. Jefferson St.
Phoenix, AZ 85034

Re: The United States' Findings and Conclusions Based on Its Investigation of the State of Arizona's Department of Corrections, Rehabilitation and Reentry under Title II of the Americans with Disabilities Act, DJ # 204-8-265

Dear Director Thornell and Ms. Oddo:

The United States Department of Justice (the Department) has investigated the State of Arizona's Department of Corrections, Rehabilitation and Reentry (ADCRR) under Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12131-12134, and its implementing regulations, 28 C.F.R. pt. 35. The Department opened this investigation in response to complaints from incarcerated persons with vision disabilities alleging that ADCRR discriminated against them and similarly situated individuals because of their disabilities.

Under Title II of the ADA, no qualified individual with a disability shall, on the basis of 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; 28 C.F.R. § 35.130(a). ADCRR is a public entity. 42 U.S.C. § 12131(1); 28 C.F.R. § 35.104. Title II authorizes the United States to investigate complaints, make findings of fact and conclusions of law, and attempt to secure voluntary compliance where violations are found. 42 U.S.C. § 12133; 28 C.F.R. pt. 35, subpt. F.

The Department's investigation of ADCRR's compliance with Title II included interviews with incarcerated individuals with disabilities and ADCRR Deputy Wardens across multiple ADCRR facilities as well as a review of documents produced by ADCRR. Based on its investigation, the Department has determined that ADCRR has discriminated against individuals with disabilities in violation of the ADA by:

- Failing to ensure ADCRR's communications with individuals with disabilities are as effective as its communications with others, 28 C.F.R. § 35.160(a), including failing to provide appropriate auxiliary aids and services where necessary to afford individuals with

disabilities an equal opportunity to participate in and benefit from ADCRR's programs, 28 C.F.R. § 35.160(b);

- Failing to reasonably modify ADCRR policies, practices, or procedures where necessary to avoid discrimination against individuals with vision disabilities, 28 C.F.R. § 35.130(b)(7); and
- Denying qualified individuals with disabilities an equal opportunity to participate in or benefit from its services, programs, or activities, 28 C.F.R. § 35.130.

This letter sets out the Department's findings of fact and conclusions of law and the minimum steps ADCRR must take to meet its legal obligations and remedy the violations identified.

Findings of Fact

ADCRR discriminates against individuals with vision disabilities, including those who are blind or have low vision. First, ADCRR fails to provide individuals with vision disabilities with needed auxiliary aids and services or reasonable modifications.¹ Second, ADCRR does not have accessible processes for making disability-related requests or filing complaints or grievances regarding disability-related needs, living conditions, medical issues, and other concerns. Third, ADCRR's use of inmate aides and other incarcerated persons to assist individuals with vision disabilities does not provide those individuals with effective communication or equal access to ADCRR programs, services, and activities.

1. ADCRR Fails to Provide Individuals with Vision Disabilities with Needed Auxiliary Aids and Services or Reasonable Modifications

ADCRR's failure to provide necessary auxiliary aids, services, and reasonable modifications for individuals with vision disabilities begins at intake. ADCRR's intake screening process is meant to identify each individual's disabilities and their related needs. ADCRR does not, however, have any written policies regarding how to screen for vision disabilities or how to develop a plan to address individuals' disability-related needs. As a result, individuals with vision disabilities often wait for extended periods to have even basic needs addressed. For example, it took ADCRR nearly a year to provide one individual who is blind with a white cane he requested during intake.

ADCRR's intake and orientation process is also supposed to provide newly incarcerated individuals with critical information about prison policies and procedures. Much of this information, however, is included in an "inmate handbook" that is only available in written form that is not readable or accessible to individuals with vision disabilities. ADCRR policy provides that the handbook and any other relevant written rules and policies will be read aloud to

¹ Some common examples of auxiliary aids and services for individuals who are blind or have low vision include providing information in large print, Braille, an accessible electronic format for use with a computer-screen reading program, or as an audio recording. They also include a wide variety of technologies such as screen-reader or magnification software, optical readers, and video description and secondary auditory programming (SAP) devices that pick up video-described audio feeds for television programs.

individuals with vision disabilities and that processing staff will ensure those individuals understand the materials read aloud. However, this policy is not followed.

ADCRR staff did not read or explain the handbook to multiple incarcerated individuals with vision disabilities even when those individuals directly asked staff for such assistance. Others were not even informed that there was an inmate handbook at intake. One individual did not learn that such a handbook existed for more than a year.

Beyond intake, ADCRR's failure to provide individuals with vision disabilities with the modifications or auxiliary aids and services they need limits their ability to access and benefit from various ADCRR programs, services, and activities.

While ADCRR's official policy mandates that all education programs be accessible, individuals with vision disabilities cannot effectively participate in ADCRR classes on topics like reentering society, anger management, or job training because they cannot read the materials.

ADCRR's official policies also provide that individuals with disabilities will be eligible to work as long as their participation does not pose a direct threat to the health and safety of others. Nonetheless, multiple individuals with vision disabilities have few or no jobs available to them because ADCRR refuses to consider providing effective communication and reasonable modifications that would enable these individuals to work.

General requests for accessible materials or technology are also routinely denied or ignored. Multiple individuals with vision disabilities were denied requests for audio materials, materials in Braille, Braille printers, and Braille readers or displays, which are external devices that convert computer text to Braille by raising and lowering different combinations of pins. Although ADCRR claims to provide computers with screen reading software, many individuals have never been given access to such technology. And the tablets ADCRR provides to incarcerated persons for various activities—including filling out Health Needs Request (HNR) forms, communicating with prison staff, sending emails, attending video visits with friends and family, and taking classes—are not fully accessible to individuals with vision disabilities who cannot see what is displayed on the touchscreen. Although the tablets' built-in screen reading feature allows individuals with vision disabilities to use a few features, such as purchasing movies and music, the screen reader is incompatible with other important functions such as filling out forms. The tablets can be connected to a keyboard with a Braille overlay. But, while some individuals with vision disabilities read and need materials in Braille, many others do not. Most individuals with vision disabilities must therefore forgo use of the tablets' features or rely on help from other incarcerated persons to use them.

Multiple incarcerated persons with vision disabilities have made requests for modifications and auxiliary aids related to various other aspects of prison life that have been denied or ignored. For example, two individuals waited more than a year to receive accessible locks for their personal lockers. Both have had personal possessions stolen from their lockers because their vision disabilities prevent them from using the standard-issue numerical combination locks. Other individuals with vision disabilities have had ADCRR deny or delay

fulfilment of their requests for other disability-related aids, like white canes that they need to safely move around, and audio recorders.

2. ADCRR Does Not Have Accessible Processes for Making Requests or Complaints

ADCRR does not provide accessible processes for incarcerated persons with vision disabilities to request reasonable modifications or auxiliary aids or services or to complain about or file grievances regarding unfulfilled requests.

As mandated by the ADA, ADCRR policy generally requires the provision of reasonable modifications and auxiliary aids and services for incarcerated persons with disabilities upon request. These modifications include things like white canes, accessible locks, and accessible print materials. The primary way for incarcerated persons to make such requests is by submitting an HNR. HNRs, however, are only available in paper form or on ADCRR-issued tablets, neither of which are accessible to all individuals with vision disabilities. According to ADCRR, individuals who cannot fill out HNRs can get help from other incarcerated persons, including assigned “inmate aides,” or ADCRR staff. But these options are ineffective, often compromise the privacy of those needing assistance, and do not allow individuals with vision disabilities to complete these forms independently like their peers who do not have disabilities.

Given the sensitive nature of many of these requests, individuals with vision disabilities are often put in the uncomfortable position of having to reveal their private medical information to other incarcerated persons they do not fully trust, or foregoing the request process altogether. Indeed, multiple individuals said that they do not feel comfortable relying on other incarcerated persons to make their requests but have no other choice. One individual, for example, requested to speak directly with someone in the medical unit rather than use an inmate aide to file an HNR, but his request was denied.

ADCRR’s process to complain about requests that are ignored or denied is also inaccessible. ADCRR policy provides that individuals with disabilities whose disability-related requests are denied have the option of contacting the ADA Coordinator at their facility to discuss their request. Many incarcerated individuals, however, were not informed there is an ADA Coordinator at their facility or told how to contact them. ADCRR could not provide records of any meetings ever having occurred between individuals with disabilities and facility ADA Coordinators. And the individuals designated as ADA Coordinators admitted that they had received no training on their ADA Coordinator responsibilities.

Where informal methods of obtaining requested aids or services fail, ADCRR policy permits incarcerated persons to file a formal grievance. Like the HNR forms, however, the grievance forms are inaccessible and require individuals with vision disabilities to rely on other incarcerated individuals for assistance in filing them. In addition to the privacy concerns associated with seeking such assistance, many incarcerated individuals told us grievances rarely produce results.

Finally, ADCRR further deters individuals with vision disabilities from using its inaccessible request and grievance processes by failing to adequately inform these individuals about what modifications, aids, and services might be available upon request. One individual

who became blind while incarcerated, for example, did not know what services or modifications might be available because no one had offered him any assistance.

3. *ADCRR's Use of Inmate Aides and Other Incarcerated Persons to Assist Individuals with Vision Disabilities Does Not Provide those Individuals with Effective Communication or Equal Access to ADCRR Programs, Services, and Facilities*

Incarcerated individuals with vision disabilities may request an “inmate aide” to assist them with physically navigating the facility and with other tasks such as submitting forms and corresponding with friends and family members. ADCRR’s hiring, training, and supervision practices, however, are not adequate to ensure that these aides provide effective assistance.

ADCRR admits that it does not provide any formal training to inmate aides. Instead, any instruction they receive “occurs on the job” and is largely left to the individual with the disability who is being assigned the aide. ADCRR does not, for example, train aides on how to help an individual with a vision disability physically navigate the facility where they are housed, or on the importance of providing reliable and confidential support to those they assist. This lack of training is reflected in aide performance.

One individual who is blind has been led by his assigned aide into walls and other people several times. When he requested his aide be properly trained on how to lead him, ADCRR refused. Two others with vision disabilities, who rely on their aides to navigate around their facilities, had aides that were regularly late or absent causing them to miss meals and medical appointments.

Many individuals with vision disabilities are especially concerned about their aides’ failures to maintain their privacy and confidentiality. According to ADCRR personnel and policy, incarcerated persons should never have to give confidential information to an aide. Yet one of the roles of inmate aides is to help incarcerated persons fill out forms, such as HNRs, which often include confidential information. Other inmate aide duties, such as helping make purchases at the commissary or handling personal correspondence, also involve access to sensitive personal information.

Many individuals with vision disabilities have had the trust they were forced to place in their aides—or in other incarcerated persons—be abused. For example, one individual who relied on another incarcerated person to help him write letters to a pen pal lost that relationship when the individual assisting him tried, without his knowledge, to extort money from his pen pal. Another person’s cellmate, who assisted him with writing letters to his sister, took the sister’s address and wrote her a letter without his knowledge. Because of abuses of this nature, several individuals reported that they had stopped sending any correspondence at all.

Conclusions of Law

Based on the above factual findings, the Department has determined that ADCRR has discriminated against individuals with disabilities. First, by failing to provide them with effective communication. Second, by failing to reasonably modify its policies, practices, and procedures to avoid discriminating against them based on disability. And third, by denying them

an equal opportunity to participate in and benefit from ADCRR’s services, programs, and activities.

1. *ADCRR Fails to Provide Effective Communication to Incarcerated Persons Who Are Blind or Have Low Vision*

The Title II regulations mandate that a public entity provide effective communication, including by “furnish[ing] appropriate auxiliary aids and services where necessary to afford qualified individuals with disabilities . . . an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity” provided by a public entity. 28 C.F.R.

§ 35.160(b)(1). These auxiliary aids and services must “be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability.” 28 C.F.R. § 35.160(b)(2). And, “[i]n determining what types of auxiliary aids and services are necessary, a public entity shall give primary consideration to the requests of individuals with disabilities.” *Id.*

To comply with these regulations, states operating correctional facilities have an affirmative obligation to evaluate the needs of newly incarcerated individuals with disabilities—as well as individuals who become disabled while incarcerated or whose disabilities change over time—and to ensure they receive necessary auxiliary aids, services, and reasonable modifications. *See Pierce v. D.C.*, 128 F. Supp. 3d 250, 268 (D.D.C. 2015) (“[T]he failure of prison staff to conduct an informed assessment of the abilities and accommodation needs of a new inmate who is obviously disabled is intentional discrimination in the form of deliberate indifference and violates Section 504 and Title II as a matter of law.”); *see also Updike v. Multnomah Cnty.*, 870 F.3d 939, 954 n.6 (9th Cir. 2017) (“[T]here may be situations where a public entity’s duty to look into and provide a reasonable accommodation may be triggered when the need for accommodation is obvious, and the public entity is on notice about a need for accommodation.”) (internal quotation marks omitted).

ADCRR does not satisfy this obligation. It does not proactively identify or develop a plan to address the communication needs of individuals with vision disabilities nor does it provide accessible processes for such individuals to independently request the aids, services, and modifications they need or complain about those requests being unfulfilled. ADCRR’s failure to engage with and promptly meet the ongoing communication needs of individuals with vision disabilities is perhaps best exemplified by its ADA Coordinators who are unknown to the individuals they are meant to assist and who keep no records of having met with any individuals with disabilities.

By failing to proactively or reactively meet the needs of individuals with vision disabilities, ADCRR denies them effective communication throughout their incarceration. At intake, individuals with vision disabilities are denied equal access to the inmate handbook, leaving them without information fundamental to their day-to-day lives. They are regularly forced to wait for extended periods to obtain basic disability-related aids, services, and modifications. And, after intake, ADCRR’s failure to provide necessary aids, services, and modifications to individuals with vision disabilities prevents them from equally participating in education and employment programs or benefiting from other services available to individuals without disabilities.

ADCRR's primary answer for its failure to individually assess and provide for the needs of those who are blind or have low vision is that these individuals can get help from other incarcerated persons, especially via ADCRR's inmate aide program. But this is no answer. ADCRR's inmate aides are untrained, poorly supervised, and at times untrustworthy. They do not enable individuals with vision disabilities to privately and independently engage in essential programs, services, and activities—like submitting HNRs, making purchases from the commissary, or corresponding with loved ones. As a result, individuals with vision disabilities must choose between giving up their privacy to obtain basic prison services, or simply going without—a burden not placed on those without disabilities.

2. *ADCRR Fails to Make Necessary Reasonable Modifications for Incarcerated Persons Who Are Blind or Have Low Vision*

ADCRR fails to comply with its obligation under Title II to reasonably modify its policies, practices, or procedures where necessary to avoid discrimination against incarcerated individuals with disabilities. 28 C.F.R. § 35.130(b)(7)(i).

As discussed above, ADCRR routinely fails to meet its obligation to evaluate the disability-related needs of incarcerated individuals and address them. *See Pierce*, 128 F. Supp. 3d at 268; *Updike*, 870 F.3d at 954 n.6. *See also Clark v. Cal.*, 739 F. Supp. 2d 1168, 1178 (N.D. Cal. 2010) (“[D]efendants must ensure that developmentally disabled prisoners are properly identified in order to provide reasonable accommodations to those prisoners under the ADA and § 504.”). ADCRR's inaccessible processes for making requests, including those for reasonable modifications, lead many individuals not to make requests in the first place. Even when such requests are successfully submitted, they often are ignored or denied.

There also is no indication that ADCRR providing the modifications at issue would fundamentally alter its programs, services, or activities, or impose an undue burden on ADCRR. *See* 28 C.F.R. § 35.130(b)(7)(i). Indeed, some modifications that may be necessary to avoid discrimination, such as reading the inmate handbook aloud to individuals with vision disabilities, are already part of ADCRR official policies. ADCRR fails, however, to consistently implement them. Other potentially necessary modifications, like permitting an individual with low vision to speak directly with someone in the medical unit to avoid relying on the help of another incarcerated person, or providing an accessible lock to someone who is blind who cannot use a numerical combination lock, are capable of implementation and are not unduly burdensome.

3. *ADCRR Denies Incarcerated Persons Who Are Blind or Have Low Vision an Equal Opportunity to Benefit from Its Programs, Services, and Activities*

Under Title II, ADCRR must provide individuals with disabilities an equal opportunity to participate in and benefit from ADCRR programs. 28 C.F.R. § 35.130(b). ADCRR does not comply with this mandate. ADCRR's failure to provide necessary auxiliary aids, services, and reasonable modifications prevents individuals with vision disabilities from equally participating in a wide range of ADCRR programming. ADCRR's inaccessible handbook denies individuals with vision disabilities an equal opportunity to understand and comply with prison policies. The lack of accessible course materials and reasonable modifications denies them an equal

opportunity to participate in education and employment programming. The inaccessible HNR and grievance processes deny them an equal opportunity to obtain care or services they need. And ADCRR's untrained, unreliable, and sometimes untrustworthy aides deny individuals with vision disabilities an equal opportunity to safely move about their facilities and to independently and privately engage in basic activities of prison life.

ADCRR's failings have severe consequences. Along with demeaning and diminishing the quality of life of individuals with vision disabilities during their incarceration, ADCRR prevents these individuals from fully taking advantage of ADCRR programs and services that could further their rehabilitation and better prepare them for eventual release.

Remediation

ADCRR has violated and continues to violate Title II of the ADA through its discriminatory treatment of individuals with vision disabilities. To remedy these violations, and to protect the civil rights of individuals with disabilities going forward, ADCRR should promptly implement corrective measures, including:

1. Adopt, revise, and implement relevant policies, practices, and procedures to ensure ADCRR provides individuals with vision disabilities with effective communication and an equal opportunity to participate in and benefit from ADCRR services, programs, and activities.
2. Reasonably modify ADCRR policies, practices, and procedures when necessary to ensure that individuals with vision disabilities have equal access to ADCRR services, programs, and activities.
3. Train all ADCRR employees on and ensure they comply with the requirements of Title II, its implementing regulation, and ADCRR's non-discrimination policies.
4. Designate and train employees to coordinate ADCRR's overall efforts to comply with Title II, and employees at each ADCRR facility to coordinate that facility's ADA compliance efforts, with the responsibilities of these individuals to include coordinating appropriate and timely responses to disability-related requests and investigating and resolving ADA complaints and grievances.
5. Provide the United States with written status reports and other information, including access to facilities and files, delineating all steps taken to comply with these requirements, including the dates on which each step was taken, and, where applicable, information sufficient to demonstrate compliance.

We hope to work cooperatively with you to resolve the Department's findings. If ADCRR declines to enter into voluntary compliance negotiations, or if our negotiations are unsuccessful, the United States may take appropriate action, including initiating a lawsuit. Please also note that this letter is a public document that will be posted on the Civil Rights Division's website and shared with the complaining parties. A complainant may file a private suit pursuant to 42 U.S.C. § 12133 whether or not we find a violation.

Please contact Adam Lewis (adam.lewis@usdoj.gov) and Stephanie Berger (stephanie.berger@usdoj.gov), Trial Attorneys at the Disability Rights Section of the Civil Rights Division, within 14 days of the date of this letter if ADCRR is interested in working with the United States to reach an appropriate resolution.

Sincerely,

Rebecca B. Bond

Rebecca B. Bond
Chief
Disability Rights Section

cc: Bill C. Solomon
Assistant United States Attorney
District of Arizona