

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**
Civil Action No. 0:23-cv-367

UNITED STATES OF AMERICA,

Plaintiff,

v.

MINNESOTA DEPARTMENT OF
CORRECTIONS,

Defendant.

COMPLAINT

DEMAND FOR JURY TRIAL

INTRODUCTION

1. The United States of America brings this suit against the Minnesota Department of Corrections (MNDOC or Defendant) to enforce the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12131–34, as amended, and the Department of Justice’s implementing regulation. The United States respectfully alleges as follows:

2. The MNDOC unlawfully discriminates against incarcerated individuals with disabilities in its General Educational Development (GED) program. All MNDOC adult facilities provide a GED program, including courses, practice tests, and official exams. The MNDOC requires that all incarcerated individuals have a secondary educational credential—such as a high school diploma, state adult diploma, or GED certificate. Incarcerated individuals must complete this educational requirement to be eligible to participate in college or career and technical programs offered in MNDOC facilities or to work in prison jobs where they can earn more than they would in the educational program.

3. The MNDOC operates its GED program in a manner that discriminates against individuals with disabilities. Incarcerated individuals with disabilities are denied an equal opportunity to benefit from the MNDOC's GED program and are subjected to discrimination in violation of the ADA. The MNDOC fails to provide individuals with disabilities with necessary reasonable modifications during GED courses and practice tests, such as modified assignments and one-on-one assistance, and denies individuals with disabilities the opportunity to obtain accommodations during GED exams. Incarcerated individuals repeatedly fail their GED practice tests and exams and remain for months or years in the GED program, unable to progress to other opportunities like college programs or higher-paying prison jobs.

PARTIES

4. Plaintiff is the United States of America.

5. Defendant MNDOC is a state agency that operates the State of Minnesota's prison system and provides correctional services, including educational services, to incarcerated individuals. Defendant MNDOC is a "public entity" within the meaning of Title II of the ADA, 42 U.S.C. § 12131(1) and 28 C.F.R. § 35.104, and is therefore subject to Title II of the ADA and its implementing regulation.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action under Title II of the ADA, 42 U.S.C. § 12133, and 28 U.S.C. §§ 1331 and 1345.

7. The Court may grant the relief sought in this action pursuant to 28 U.S.C. §§ 2201–02 and 42 U.S.C. § 12133.

8. The United States has authority to seek remedies for violations of Title II of the ADA. 42 U.S.C. § 12133; 28 C.F.R. pt. 35, subpt. F. The United States of America brings this action under 42 U.S.C. §§ 12131–34 to enforce the rights of incarcerated individuals with disabilities under the ADA.

9. Venue is proper in this district under 28 U.S.C. § 1391(b) because the claims alleged herein occurred in the District of Minnesota.

FACTUAL ALLEGATIONS

A. MNDOC GED Program Overview

10. The MNDOC requires that all incarcerated individuals have a secondary educational credential—such as a high school diploma, state adult diploma, or GED certificate.

11. The MNDOC’s GED program includes courses, practice tests, and exams. The MNDOC provides and oversees its GED program in all ten of its adult facilities. The MNDOC employs over 20 teachers or staff to provide its GED program to incarcerated individuals across these ten facilities.

12. As of July 1, 2022, there were 7,833 adults incarcerated with the MNDOC, and around 2,000 of these individuals lacked a secondary credential and are enrolled in a MNDOC secondary credential program. Hundreds of incarcerated individuals are enrolled

in the MNDOC's GED program on any given day, and many are individuals with disabilities.

13. Some incarcerated individuals with disabilities require accommodations during GED courses, practice tests, and exams in order to have an equal opportunity to benefit from the GED program.

14. These accommodations include extended time, private testing, frequent breaks, one-on-one assistance, scribes, audio books or materials in alternative formats, and modified assignments.

15. The MNDOC can approve and provide accommodations to individuals with disabilities during GED courses or practice tests.

16. For accommodations on the official GED exam, an incarcerated individual must receive approval from both the MNDOC and GED Testing Service LLC (GTS) for GED exam accommodations.

17. No incarcerated individual may apply to GTS for GED exam accommodations unless the MNDOC first screens and agrees that the person has a disability and should apply for accommodations.

18. If the MNDOC approves, MNDOC staff submit the individual's accommodation request to GTS, because such requests are made through an online portal and incarcerated individuals are prohibited from accessing the internet. GTS then determines whether to grant the request for exam accommodations. If GTS approves, then the MNDOC provides accommodations during the GED exam.

19. The MNDOC rarely permits individuals with disabilities to apply to GTS for GED exam accommodations. Even though hundreds of incarcerated individuals are enrolled in the GED program on any given day and the MNDOC knows that many of its GED students have disabilities, the MNDOC has allowed only 12 incarcerated individuals with disabilities to apply to GTS for GED exam accommodations since January 1, 2017.

20. All GED exam accommodation requests since January 1, 2017 came from one facility. The MNDOC has no evidence of any incarcerated individual receiving GED exam accommodations at any of its nine other facilities since January 1, 2017.

B. MNDOC Failure to Properly Identify and Evaluate Individuals with Disabilities

21. Upon intake and throughout their incarceration, the MNDOC conducts medical and mental health screenings of individuals, including screenings to identify their disabilities. The MNDOC regularly identifies individuals who have disabilities and provides them treatment for their disabilities, including medications and ongoing therapy.

22. MNDOC educational staff, such as GED teachers, face difficulties in obtaining information from MNDOC medical and mental health staff related to students' disabilities, even with the student's consent, to identify students who may need GED exam accommodations, and to support students' applications for such accommodations.

23. MNDOC medical and mental health staff generally refuse to evaluate incarcerated individuals outside their regular screening processes to determine whether they have disabilities even when these individuals need such evaluations to support their

requests for GED exam accommodations. These incarcerated individuals also generally cannot seek evaluations from medical or mental health staff outside of the MNDOC.

24. In some instances, MNDOC educational staff had to submit requests for GED exam accommodations using external data from years prior to the student's incarceration since MNDOC medical and mental health staff would not conduct updated assessments or share additional information with MNDOC educational staff.

25. MNDOC policy also requires MNDOC educational staff to identify and evaluate individuals with disabilities who need services, accommodations, or programs to ensure equal educational opportunities. With respect to individuals with disabilities in the GED program, however, the MNDOC fails to follow its own policy as MNDOC educational staff generally fail to identify and evaluate individuals with disabilities and, even if they do, MNDOC educational staff use an inappropriate definition of disability for evaluations.

26. MNDOC educational staff must use the MNDOC's eligibility determination form to evaluate whether an individual has a disability, but this form provides a definition of disability that is inconsistent with and narrower than the ADA's definition of disability.

27. The ADA defines a person with a disability as an individual with a physical or mental impairment that substantially limits one or more of the major life activities of such individual. 42 U.S.C. § 12102(1)(A). "Major life activities" include a wide range of activities, such as seeing, hearing, eating, sleeping, walking, speaking, learning, reading, concentrating, thinking, writing, communicating, interacting with others, and working. *Id.*

§ 12102(2)(A). The term also includes the operation of a major bodily function, such as the functions of the neurological system or the operation of an organ. *Id.* § 12102(2)(B). The term “substantially limits” must be construed broadly and should not demand extensive analysis. *Id.* § 12102(4)(A)-(B). The impairment does not need to prevent or significantly restrict an individual from performing a major life activity, and the limitations do not need to be severe, permanent, or long-term.

28. The MNDOC form states that a person has a disability and is eligible for accommodations when the person has an impairment that substantially limits a major life activity, but contrary to the ADA, the MNDOC defines “substantially limits” as “unable to perform a major life activity that the average student of approximately the same age can perform” or “significantly restricted as to the condition, manner, or duration under which a particular life activity is performed as compared to the average student of approximately the same age.” The MNDOC form also states, “The impairment must be substantial and somewhat unique, rather than commonplace, when compared to the average student of approximately the same age.”

29. MNDOC staff have never had formal training on the meaning of these terms.

30. One MNDOC employee stated that anxiety and depression would not qualify as disabilities since they are common and not “unique” among incarcerated individuals in the MNDOC facility, as required in the MNDOC form.

31. In at least one instance, MNDOC educational staff used the form’s definition of “substantially limits” to find that an individual with depression, anxiety, and Post

Traumatic Stress Disorder (PTSD) did not qualify as a person with a disability even though the individual reported that his impairments impacted his focus, comprehension, memory, and ability to handle stress. MNDOC staff determined that this individual had no documented disabilities even though his GED teacher provided documents showing that he had taken antidepressants while residing at a treatment center for individuals with substance use disorder and mental health diagnoses. The MNDOC rejected the individual's request to apply for GED exam accommodations to GTS, and as a result, the individual received no GED exam accommodations and could not obtain a GED prior to release.

C. MNDOC Failure to Properly Identify, Evaluate, and Accommodate Individuals with Disabilities for GED Courses and Practice Tests

32. If MNDOC staff identify that a person has a disability, such staff must refer to the MNDOC's policy of providing reasonable modifications to persons with disabilities, notify other appropriate staff, and record information about any disabilities and needs in the person's MNDOC file. In addition, if an incarcerated person reports impairments to MNDOC staff or if staff observe that a person has an obvious or potential physical, developmental, or mental impairment, the MNDOC requires staff to refer to the MNDOC's policy on providing reasonable modifications to persons with disabilities.

33. Incarcerated individuals informed MNDOC educational staff about their disabilities and need for accommodations in GED course, practice tests, and exam, but MNDOC educational staff did not inform them about their right to request reasonable modifications.

34. MNDOC educational staff knew or suspected that certain GED students have disabilities based on observations of these students' obvious or potential physical, developmental, or mental impairments. But MNDOC educational staff did not refer to or follow the MNDOC's policy on providing reasonable modifications and did not inform these students that they could apply for reasonable modifications in the GED program or on the GED exam.

35. When incarcerated individuals with disabilities did request reasonable modifications for GED courses and practice tests, MNDOC educational staff generally refused to provide them with such modifications.

D. MNDOC Failure to Properly Identify, Evaluate, and Accommodate Individuals with Disabilities for GED Exams

36. The MNDOC also prevented individuals with disabilities from applying for GED exam accommodations, including by outright prohibiting them from submitting applications to GTS.

37. In at least one instance, the MNDOC prohibited an incarcerated individual with a head injury, depression, anxiety, and PTSD from applying for GED exam accommodations even though the individual stated that his impairments impacted his focus, comprehension, memory, and ability to handle stress and his MNDOC GED teacher provided documents and her own observations and assessment to support his accommodation application.

38. The MNDOC also unreasonably delayed in submitting incarcerated individuals' applications for GED exam accommodations to GTS. Multiple incarcerated individuals experienced lengthy, months-long delays between submission of a request or referral for GED exam accommodations and the MNDOC's response. Some individuals' requests for GED exam accommodations were not resolved in time for their exams or before their release from custody.

39. Because the MNDOC prohibits incarcerated individuals from accessing the internet, they have limited access to information regarding GED exam accommodations, so MNDOC staff serve a critical role in providing incarcerated individuals with information about their rights. An incarcerated individual also cannot independently apply for GED exam accommodations, and the MNDOC must submit their application to GTS.

40. MNDOC educational staff generally failed to inform incarcerated individuals with disabilities that they could request GED exam accommodations or the process for requesting such accommodations.

41. Even when incarcerated individuals with disabilities notified MNDOC staff of their disabilities and requested accommodations for the GED exam, MNDOC educational staff generally failed to take any steps to provide them with accommodations or adequately respond to their requests.

E. Aggrieved Persons

42. The Department has received complaints alleging that the MNDOC discriminates against qualified individuals with disabilities in its GED program and caused them significant harm.

43. Student A has been diagnosed with bipolar disorder, depression, Attention-deficit/hyperactivity disorder (ADHD), and autism. He has been on anti-depressants and other medications for many years to treat his disabilities. He received special education services pursuant to the Individuals with Disabilities Education Act (IDEA) from kindergarten until he stopped attending school in tenth grade, and his accommodations included smaller classrooms and one-on-one or additional staff assistance. When he was first incarcerated with the MNDOC, he was approximately 20 years old, and the MNDOC provided services to him pursuant to his Individualized Education Program (IEP) while he was incarcerated at the MNDOC Rush City facility. But once he turned 21 years old, he was told he had “aged out” and was no longer eligible for special education services under the IDEA. He entered the GED program, but the MNDOC did not evaluate his disability or provide him with reasonable modifications in the GED program. He failed the math portion of the GED exam. He was having mental health issues and asked MNDOC staff if he could have more time to study before taking the math portion since he felt unready due to his emotional state. MNDOC staff refused and made him take the math portion as scheduled. Because he was not told, he did not realize he could formally request accommodations for the GED exam, such as delaying his test or any other

accommodations. He felt frustrated and unable to focus during the exam due to his disabilities, and he failed. The MNDOC terminated him from the GED program. After he was terminated, he received paperwork stating that he could appeal the decision, but by the time he received the paperwork, the appeal date had already passed. He was not able to obtain his GED while incarcerated and was ultimately released from MNDOC custody.

44. Student B was incarcerated from 2017 until August 2021 at four different MNDOC facilities and from October to December 2021 in two MNDOC facilities. He has ADHD, depression, anxiety, substance use disorder, and antisocial personality disorder. MNDOC staff identified that he has antisocial personal disorder and substance use disorder and provided him with prescriptions for medications to treat his disabilities. MNDOC staff also noted that he exhibited constant foot tapping and sporadic finger movement. He took GED practice tests in 2017, and ultimately passed two of four GED exams. He had a hard time focusing and would run out of time while taking his GED exams due to his disabilities. He was never informed that he could obtain accommodations until four years into his incarceration, around June 2021, when an MNDOC employee informed him. He then submitted a formal request for GED exam accommodations to the MNDOC. On July 13, 2021, the MNDOC found that his impairments caused him to be substantially limited in learning, concentrating, reading, sleeping, and thinking. The MNDOC created a written accommodation plan that stated that his accommodations would be to “apply for extended time” on the GED exam. On July 16, 2021, the MNDOC submitted a request to GTS requesting extra time and a separate room on his behalf, and GTS approved the request.

He passed his GED exam with these accommodations. He believes that if he had GED exam accommodations, such as extended time, earlier in 2017, then he would have passed all the exams many years prior. Instead, he spent four years incarcerated without a GED and could not move on to obtain work in a higher-paying prison jobs or participate in other programs

F. Harm to Individuals with Disabilities

45. The MNDOC denies qualified individuals with disabilities an equal opportunity to benefit from its GED program by failing to provide them with necessary reasonable modifications.

46. As a result, qualified individuals with disabilities suffered during GED courses and practice tests, failed their GED exams, were terminated from the GED program, or were released from incarceration without a GED. Some were forced to repeatedly take and fail GED practice tests or exams without accommodations over many months or years while incarcerated individuals without disabilities passed and moved on to other programs and opportunities.

47. Incarcerated individuals must complete this educational requirement to be eligible to work in prison jobs where they can earn higher wages or participate in college or career technical programs offered in MNDOC facilities. The MNDOC pays individuals 50 cents per hour while they participate in the GED program. In contrast, if the person works at a prison job, the MNDOC pays an hourly wage that may increase in 25 cent

increments, reaching as much as \$1 or \$1.50 per hour. There are other MNDOC programs that pay as much as \$2 to \$3 per hour.

48. Thus, the GED program serves a critical role since incarcerated individuals cannot access many prison programs until they obtain a secondary educational credential. This further compounds the unequal treatment to which the MNDOC subjects individuals with disabilities. Incarcerated individuals with disabilities suffered economic and non-economic harms due to the MNDOC's discrimination against them.

CAUSE OF ACTION
Violation of Title II of the Americans with Disabilities Act
(42 U.S.C. §§ 12131–34)

49. The foregoing paragraphs are incorporated herein.

50. All conditions precedent to the filing of this Complaint have occurred or been performed. *See* 28 C.F.R. pt. 35, subpt. F.

51. Defendant MNDOC violates Title II of the ADA, 42 U.S.C. §§ 12131–34, and its implementing regulation, 28 C.F.R. pt. 35, by discriminating on the basis of disability, including by:

- a. denying qualified individuals with disabilities the benefits of its services, programs, or activities—including its GED program—and otherwise subjecting them to discrimination in violation of 42 U.S.C. § 12132;
- b. denying qualified individuals with disabilities an equal opportunity to participate in or benefit from its services, programs, or activities—

including its GED program—in violation of 28 C.F.R. § 35.130(a)-(b)(1)(i)-(ii); and

- c. failing to make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity, in violation of 28 C.F.R. § 35.130(b)(7)(i).

52. Qualified individuals with disabilities have been injured by and continue to be harmed and aggrieved by Defendant’s discriminatory conduct.

53. Defendant had knowledge that there was a significant likelihood that its failure to provide GED course, practice test, and exam modifications violated the ADA, but nonetheless, Defendant failed to implement necessary corrective measures and continues to discriminate against individuals with disabilities.

PRAYER FOR RELIEF

WHEREFORE, the United States prays that the Court:

- A. Grant judgment in favor of the United States and declare that Defendant has violated Title II of the ADA, 42 U.S.C. §§ 12131–34, as amended, and implementing regulations.
- B. Enjoin Defendant from engaging in discriminatory policies and practices against individuals with disabilities or otherwise violating Title II of the ADA and implementing regulation;

- C. Require Defendant to adopt or revise its policies to ensure that Defendant does not discriminate against, exclude from participation, or deny the benefits of its GED program to qualified individuals with disabilities;
- D. Order Defendant to identify one or more employees responsible for monitoring compliance with the ADA, training staff, and overseeing investigations and resolutions of ADA complaints or grievances in compliance with 28 C.F.R. § 35.107(a);
- E. Order Defendant to update its complaint process as needed, to ensure that ADA-related complaints are promptly reviewed, investigated, and equitably resolved in compliance with 28 C.F.R. § 35.107;
- F. Order Defendant to train and educate all staff about the nondiscrimination requirements of Title II of the ADA;
- G. Order Defendant to take such affirmative steps as may be necessary to restore, as nearly as practicable, all aggrieved persons to the position they would have been in but for the discriminatory conduct;
- H. Award compensatory damages to all aggrieved individuals for injuries caused by the ADA violations alleged in this Complaint, pursuant to 42 U.S.C. § 12133; and
- I. Order such other appropriate relief as the interests of justice may require.

Dated: February 14, 2023

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