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Re: DOJ Public Reporting of Title II and Title III ADA Complaint Data

The undersigned members of the Consortium for Constituents with Disabilities (CCD) Rights Task Force appreciate the U.S. Department of Justice's (DOJ) efforts to enforce and uphold the Americans with Disabilities Act (ADA) and actively engage with disability rights advocates. In furtherance of these efforts, we write to urge DOJ to publish annual public reports on ADA Title II and Title III complaints.

I. As the primary enforcer of the ADA, DOJ should provide regular complaint data reports.

DOJ is the federal agency charged with primary responsibility for enforcing the ADA and its implementing regulations. Despite DOJ's key role in the enforcement of Titles II and III of the ADA, the Department does not publicly report any complaint data. Periodic public complaint data reports are crucial for transparency, as well as effective ADA enforcement and advocacy.

CCD is the largest coalition of national organizations working together to advocate for federal public policy that ensures the self-determination, independence, empowerment, integration, and inclusion of children and adults with disabilities in all aspects of society, free from racism, ableism, sexism, and xenophobia, as well as LGBTQ+ discrimination and religious intolerance. We make this request based on our extensive collective experience advocating on behalf of persons with disabilities and investigating and enforcing the ADA on behalf of our constituents.

Currently, publicly available ADA complaint data is mainly limited to reports of the number of lawsuits filed each year, as tracked by third parties. We know that most complainants do not file lawsuits. DOJ complaint data would provide a fuller picture of ADA violations and complaints nationwide, including trends, and would potentially increase support for additional resources for DOJ to investigate complaints and enforce the ADA.

II. Public complaint data reports will increase transparency, aid in advocacy, and support greater resources for DOJ's enforcement efforts.

Annual ADA Title II and Title III complaint data reports – including the number and types of complaints filed, investigated, and resolved; the disposition of complaints; and the complaint backlog – would increase transparency and assist advocates in effectively enforcing the ADA.

For example, the requested complaint data reports are necessary for federal and state governments, government agencies, and courts to know the current number of reported ADA violations nationwide, the need for additional government resources for complaint review and enforcement, and the importance of a private right of action (which has recently been under review by the courts). We cannot adequately educate Congress and courts on ADA Title II and III barriers and the importance of agency and private enforcement without this critical data.

Publishing annual reports would also help advocates track persisting and repeated violations, especially when judges and defendants claim that government enforcement alone is sufficient for ADA enforcement. Disability advocates made this argument in the 2023 U.S. Supreme Court case, *Acheson Hotels v. Laufer*. However, advocates could not cite to publicly available reports, but instead had to send a FOIA request to DOJ, requesting statistics on ADA Title III complaints received since January 1, 2018, including numbers of complaints, types of claims, and the disposition of complaints. From this FOIA request, we learned that from January 2018 to June 2023, DOJ received over 95,000 Title III complaints. But the response also indicated that DOJ does not tabulate disability complaints by issue and does not track complaint resolutions. Appropriate complaint tracking and reporting should be implemented as quickly as possible.

III. DOJ, like other federal agencies, has provided data reports in the past and should do so going forward.

Other federal agencies release periodic public reports on disability-related complaints. For example:

- U.S. Department of Education publishes annual civil rights complaint reports. These reports include the bases of the received complaints, including disability; the number of complaints resolved; the number of initiated compliance reviews; and investigation and case summaries.¹ The intent of the reports is to identify significant civil rights or compliance problems and to show whether adequate progress is being made.²

¹ E.g., U.S. Department of Education, Office for Civil Rights, Fiscal Year 2022, Annual Report, Report to the President and Secretary of Education, Under Section 203(b)(1) of the Department of Education Organization Act, available at <https://www2.ed.gov/about/reports/annual/ocr/report-to-president-and-secretary-of-education-2022.pdf>.

² 20 U.S.C. §3413(b)(1).

- U.S. Department of Transportation publishes annual reports for disability discrimination complaints under the Air Carrier Access Act. These reports include the total number of complaints filed, the number filed against each air carrier, the passenger’s disability, and the basis of the complaint.³ The purpose of these reports is to provide data comparable to the complaints related to other consumer complaint data.⁴
- U.S. Department of Housing and Urban Development publishes reports on the number of disability discrimination complaints filed and summaries of notable settlements.⁵ The reports are designed (i) to show the extent of progress made in eliminating discriminatory housing practices and furthering the Fair Housing Act, (ii) to outline remaining obstacles to achieving equal housing opportunities, and (iii) to provide recommendations for further legislative or executive actions.⁶

We recognize that these agencies have legally mandated data collection and reporting requirements, unlike DOJ. However, many of the reasons for providing these reports apply equally, if not more so, to DOJ. And while DOJ may currently have fewer resources dedicated to data collection and reporting, DOJ has provided complaint reports in the past and, if needed, should reallocate and seek resources for this important purpose going forward.

Indeed, years ago DOJ published ADA complaint reports. In the 2000s, DOJ released the “Access for All: Five Years of Progress” report.⁷ The report outlined DOJ’s enforcement agenda, the bases of received complaints, industries that were commonly cited in ADA complaints, and notable cases. DOJ has provided some complaint data in public presentations in furtherance of its technical assistance mandate under the ADA. DOJ also used to publish quarterly reports that, though they did not provide exact complaint statistics, did include summaries of that quarter’s cases.⁸ Even these limited summaries have not been published in more than ten years.

In contrast, DOJ does publish public reports about other enforcement efforts. For example, the Office of Professional Responsibility publishes an annual report that includes information on the number of complaints and summaries of cases completed during the fiscal year.⁹ DOJ also publishes annual data about The No Fear Act, which

³ E.g., U.S. Department of Transportation, 2023 Airline Submissions on Complaints Received By Airlines in 2022, available at <https://www.transportation.gov/resources/individuals/aviation-consumer-protection/2023-airline-submissions-complaints-received>.

⁴ 49 U.S. Code § 41705.

⁵ E.g., U.S. Department of Housing and Urban Development, FY 2022, State of Fair Housing, Annual Report to Congress, available at <https://www.hud.gov/sites/dfiles/FHEO/documents/FHEO%20Annual%20Report%20FY%202022.pdf>.

⁶ 42 U.S. Code § 3608(e)(2).

⁷ U.S. Department of Justice, Civil Rights Division, Access for All: Five Years of Progress, On Enforcement of the Americans with Disabilities Act, available at <https://archive.ada.gov/5yearadarpt/fiveyearada.pdf>.

⁸ E.g., U.S. Department of Justice, Civil Rights Division, Disability Rights Section, Enforcing the ADA: A Status Report from the Department of Justice, April – June 2011, available at <https://archive.ada.gov/aprjun11.pdf>.

⁹ E.g., U.S. Department of Justice, Office of Professional Responsibility, Annual Report, 2022, available at https://www.justice.gov/d9/2023-02/opr-annual-report-2022_1.pdf.

prohibits workplace discrimination within the federal government. These reports include the number of complaints filed, status and bases of the complaints, number of pending complaints, and time measurements to complete investigations.¹⁰ These reports provide an analysis to review trends, progress, and any actions planned or taken to eliminate discrimination and retaliation in federal employment. A comparable ADA Title II and Title III data report can assist DOJ and advocates in reviewing trends and developing strategies to further ADA compliance.

IV. Data Requested

For these reasons, the undersigned CCD members urge DOJ to release annual data reports on the Title II and Title III disability discrimination complaints it receives, including:

1. number of complaints received for Title II and for Title III, broken down by Title;
2. types of discrimination or barriers alleged;
3. the complainant's disability;
4. any available demographic data such as socioeconomic status, race, ethnicity, sexual orientation, gender identity, age, and gender;
5. number of complaints (i) opened for investigation, (ii) pending review, (iii) referred to mediation, (iv) referred to other federal agencies, and (v) not opened; and
6. complaint dispositions, including the number resolved through enforcement, the number referred to mediation, and the number resolved through mediation.

We are also interested in knowing, on a periodic basis, both the number of staff reviewing complaints as part of the intake process, and the number of staff and attorneys investigating opened complaints.

Without periodic publication of Title II and Title III ADA complaint reports, neither DOJ nor advocates have complete and accurate information to tackle persistent barriers, to make recommendations on further legislative and executive actions, and to educate courts and legislators on the importance of robust public and private enforcement.

We urge you to implement the requested annual reports. We ask that you please respond to this letter by April 18, 2024.

Sincerely,

Access Ready Inc.
American Association of People with Disabilities
American Foundation for the Blind
Autism Society of America
Autistic Self Advocacy Network
Autistic Women & Nonbinary Network
Bazelon Center for Mental Health Law

¹⁰ E.g., U.S. Department of Justice, EEO Complaint Data, FY 2023, available at <https://www.justice.gov/jmd/media/1330206/dl?inline>.

Caring Across Generations
Center for Public Representation
CommunicationFIRST
Council of Parent Attorneys and Advocates
Disability Rights Education and Defense Fund
Epilepsy Foundation of America
Muscular Dystrophy Association
National Association of the Deaf
National Center for Parent Leadership, Advocacy, and Community Empowerment
(National PLACE)
National Disability Rights Network (NDRN)
National Down Syndrome Congress
National Health Law Program
Pandemic Patients
Paralyzed Veterans of America
Perkins School for the Blind
The Advocacy Institute
United States International Council on Disabilities
World Institute on Disability