



U.S. Department of Justice

Civil Rights Division

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

March 12, 2024

VIA EMAIL

Brian Redd
Executive Director
Utah Department of Corrections

Dan Bokovoy
Assistant Utah Attorney General

Re: The United States' Findings and Conclusions Based on Its Investigation of the State of Utah Department of Corrections under Title II of the Americans with Disabilities Act, DJ # 204-77-88

Dear Director Redd and Mr. Bokovoy:

The United States Department of Justice (the Department) completed an investigation of the State of Utah Department of Corrections, (UDOC) 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 a complaint from an incarcerated transgender woman (Complainant) alleging that UDOC discriminated against her because of her disability, gender dysphoria, by denying her equal access to health care and denying her requests for reasonable modifications.

Gender dysphoria is a serious medical condition experienced by some transgender individuals and is a diagnostic category in the Diagnostic and Statistical Manual of Mental Disorders (the DSM). Gender dysphoria is “clinically significant distress or impairment in social, occupational, or other important areas of functioning” resulting from the incongruence between gender identity and assigned sex. DSM-5-TR at 512-13. Management of gender dysphoria requires medical care and living consistently with one’s gender identity. Left untreated, individuals with gender dysphoria can experience significant adverse health outcomes, including risk of suicide and surgical self-mutilation. World Pro. Ass’n for Transgender Health, Standards of Care for the Health of Transgender and Gender Diverse People, Version 8, at S106 (Sept 15, 2022) (WPATH Standards).

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). UDOC is a public entity. 42 U.S.C. § 12131(1); 28 C.F.R.

§ 35.104. Complainant's gender dysphoria is a disability under the ADA. 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 UDOC's compliance with Title II included interviews with Complainant, and with UDOC's Medical Director, ADA Coordinator, and other UDOC staff and UDOC contractors. The Department also requested and reviewed records and policies produced by UDOC. Based on this investigation, the Department has determined that UDOC discriminated against Complainant, in violation of the ADA, by:

- Denying her equal access to healthcare services, 28 C.F.R. § 35.130(a);
- Imposing unnecessary eligibility criteria for assessment and treatment for gender dysphoria that it does not require for other conditions, 28 C.F.R. § 35.130(b)(8); and
- Failing to reasonably modify policies, practices, or procedures where necessary to avoid discriminating against Complainant, 28 C.F.R. § 35.130(b)(7).

Findings of Fact

A prison controls most aspects of an incarcerated person's life, including their access to health care and many aspects of their ability to live consistently with their gender identity. Here, based on bias and indifference to her serious health needs, UDOC failed to provide Complainant with equal access to its health care services. Utah also failed to make reasonable modifications to its policies to avoid discrimination based on Complainant's gender dysphoria. UDOC's failures had severe consequences. Complainant's gender dysphoria worsened during her incarceration at UDOC. Twenty-two months after entering custody, and after enduring repeated delays and denials of her requests for disability-related care and reasonable modifications, Complainant performed dangerous self-surgery and removed her own testicles.

UDOC unnecessarily delayed and restricted Complainant's access to medical care for gender dysphoria. It conditioned diagnostic assessment for such care on approval by a committee that included members who expressed bias against individuals who are transgender and reluctance to prescribe medically appropriate treatment for gender dysphoria.¹ Because of this committee's discriminatory views and unnecessarily prolonged approval process, Complainant did not receive health care for her gender dysphoria for more than fifteen months after she first requested treatment, despite her submitting multiple follow up requests and grievances. When UDOC finally provided Complainant with hormone therapy, it failed to take basic, necessary steps to ensure that the treatment was provided safely and effectively.

UDOC also failed to make reasonable modifications to its policies, practices, or procedures for commissary purchases, pat and visual searches, housing, and rehabilitative

¹ Transgender is a term referring to individuals whose gender identity differs from their assigned sex. Gender dysphoria is different from being transgender; it is a serious medical condition experienced by some transgender individuals.

programming, that Complainant needed to live consistently with her gender identity to treat her gender dysphoria.

1. Complainant has Gender Dysphoria

Complainant experienced symptoms of gender dysphoria for many years before she entered UDOC's custody in 2021. Her medical condition became increasingly worse while in custody, surrounded only by men, and lacking control over her daily life and health care. While at UDOC, a qualified health care professional, contracted by UDOC, diagnosed Complainant with gender dysphoria and found that she met the criteria to receive medical treatment including hormone therapy.

2. UDOC's Provision of Health Care Services to Complainant was Delayed, Inappropriate, and Rooted in Bias Against Individuals who are Transgender

UDOC provides health care services to incarcerated persons in its custody. Its policy is to "prescribe the appropriate treatment and/or therapy," and to document denial of health care in the health record and provide "sufficient medical rationale to ensure medical findings are adequate to support the denied request." UDOC Procedure IC01.04(F)(2), (J)(2). UDOC also has a policy to "appropriately diagnose and treat offenders with gender dysphoria in a humane and safe correctional environment." UDOC Policy AG37/01/03. Contrary to these policies, UDOC unnecessarily delayed Complainant's access to treatment for her gender dysphoria and then did not provide that treatment safely and appropriately.

Unlike other requests for medical care—which are typically routed directly to UDOC medical staff—a request for medical care for gender dysphoria is routed through UDOC's gender dysphoria committee. UDOC's gender dysphoria committee is the gatekeeper for care in a protracted, multistep process. An incarcerated person who self-identifies as transgender must first request an evaluation by UDOC mental health staff who will present their findings to the gender dysphoria committee. After waiting for the committee to convene, the committee decides whether to refer the individual to a health care provider for a diagnostic evaluation for gender dysphoria. If the committee approves the evaluation, UDOC refers the individual to its contract psychologist. If the committee denies the evaluation, the incarcerated person must wait one year before they are eligible to request diagnostic services again. After a diagnostic assessment, UDOC medical staff will consider the psychologist's recommendations and may order treatment with hormones, but not "[c]osmetic or elective surgical procedures for the purpose of sex reassignment." UDOC Policy AG37/02.03(A)-(D).

The gender dysphoria committee includes both medical and non-medical staff even though its only function is to handle requests for medical care. During Complainant's incarceration, the committee included members who demonstrated overt bias against the individuals seeking care and expressed reluctance to prescribe medically appropriate treatment, including hormone therapy, for gender dysphoria.

Complainant's access to medically necessary care for her disability was unnecessarily delayed due to UDOC's biased and prolonged approval process. It took UDOC nine months to provide Complainant with a diagnostic assessment for gender dysphoria and another six months

to prescribe her hormone therapy despite her submitting repeated follow up requests and grievances.

When UDOC finally allowed Complainant to start medical treatment, her UDOC physician — who was a member of the gender dysphoria committee — tried to talk her out of pursuing the hormone therapy that she had been seeking for fifteen months. When Complainant was undeterred, the physician initiated therapy but failed to take basic steps to ensure that it was provided safely and effectively. For example, the physician did not conduct routine laboratory testing to ensure that Complainant’s hormone therapy did not interfere with her other prescription medications, or to ensure that her dose levels were effective.

Incarcerated individuals at UDOC who seek health care for medical conditions other than gender dysphoria are typically not required to complete an unnecessarily protracted, multistep process. Their access to diagnostic services and treatment does not require approval by a committee that includes non-medical staff and members who are biased against them. Nor must they endure lengthy waiting periods before reapplying for care if their requests for treatment are denied.²

3. *UDOC Denied Complainant’s Requests for Reasonable Modifications to its Policies, Practices, and Procedures*

Complainant sought reasonable modifications to some of UDOC’s policies and practices to alleviate her gender dysphoria symptoms. She needed reasonable modifications because several of UDOC’s policies and programs prevented her from living consistently with her gender identity. Among other things, she requested that she be given female prison-issued clothing, be allowed to purchase gender affirming clothing and makeup available at the UDOC commissary (store), be assigned female housing, and that she not be subject to cross-gender pat searches. Complainant sought reasonable modifications by completing detailed ADA request forms and making repeated requests orally and in writing to UDOC health care and correctional staff. When those requests were ignored or rejected, she filed grievances and appeals. These, too, were ignored or rejected.

a. *Commissary and Property Requests*

UDOC issues clothing to each incarcerated person and maintains a commissary where incarcerated persons may purchase a wide range of items, including snack food, self-care products (body and skin care products, makeup, etc.), electronics, watches, clothing, and underwear.

Complainant requested female clothing by completing property requests. She also tried to buy gender affirming items including bras, women’s underwear, and makeup at the commissary. Other than one sports bra, her requests were all denied.³ Complainant then filed ADA requests and grievances explaining that “by not allowing me this opportunity to live my life as a woman,

² Moreover, for other medical conditions, determinations about cosmetic or elective surgery that result in expense to UDOC are made case-by-case by the Clinical Director. UDOC Policy IL01/01.07.

³ After the United States initiated its investigation, Complainant was provided certain gender affirming items.

who I believe I am and have lived life for many years, the prison is causing me such mental stress in the form of anxiety, depression” When UDOC denied her requests, it advised her that “female underwear and cosmetics are approved for incarcerated persons assigned to female housing units.” Complainant appealed and UDOC denied her appeals, stating that “prison incarcerated persons shall be dressed in the approved clothing for the incarcerated persons designated housing classification” and that UDOC policy does not allow female underwear, cosmetics, and bras for transgender women.

b. Pat and Visual Searches

UDOC conducts routine pat searches of incarcerated persons, and visual searches when it considers them necessary. For example, UDOC always conducts pat searches of persons leaving the dining hall. Complainant filed multiple grievances and ADA requests seeking modifications to avoid cross gender searches. UDOC ignored or denied those requests. Complainant rarely goes to the dining hall and instead eats alone in her cell because she does not want to be searched by male correctional officers.

c. Housing

UDOC policy is to make housing assignments based on “all relevant factors necessary to appropriately assign offender housing, ensuring a properly functioning and safe institution.”⁴ Its housing policy acknowledges the need to complete “screenings to review the offender population and institutional bed space needs” in order to “aid with appropriate and safe housing and to assist with incarcerated person programming opportunities, treatment opportunities, and work opportunities.” *Id.* Despite its policy to ensure appropriate and safe housing, UDOC assigns incarcerated persons, including those with gender dysphoria, to either male or female housing based solely on sex at “commitment,” as determined by staff conducting a visual search of genitals. UDOC assigned Complainant to male housing.

Complainant has made repeated and ongoing requests to be housed safely or with women. Because UDOC denied her several requests either by referencing its blanket policy, or without explanation, Complainant filed multiple grievances, which UDOC denied, advising her that “a move to the women’s facilities is not within the perimeter of UDOC’s policies and procedures.”

d. Rehabilitative Programming

UDOC provides rehabilitative programming to incarcerated individuals. Complainant sought several reasonable modifications to complete UDOC programming, including programming that could reduce her sentence. Complainant needed reasonable modifications to enable her to meaningfully participate in and complete rehabilitative programming. Because UDOC denied her requests for reasonable modifications, she has been unable to complete that programming.

⁴ UDOC Policy 01.01(1), available at <https://perma.cc/SSE6-ZSE8>.

Conclusions of Law

Based on the above factual findings, the Department has determined that UDOC discriminated against Complainant on the basis of her disability. UDOC failed to provide Complainant equal access to health care services, including by imposing unnecessary eligibility criteria for the treatment of her gender dysphoria that is not required for other health conditions. UDOC also failed to reasonably modify its policies, practices, and procedures to avoid discriminating against Complainant based on disability.

1. Complainant's Gender Dysphoria is a Disability Covered by the ADA

Complainant's gender dysphoria is a disability under the ADA because it is "a physical or mental impairment that substantially limits one or more major life activities..." 42 U.S.C. § 12102(1); 28 C.F.R. § 35.108(a)(1).⁵ Under the ADA, the term disability "shall be construed broadly in favor of expansive coverage, to the maximum extent permitted by the terms of the ADA."⁶ Physical or mental impairments covered by the ADA include any mental or psychological disorder and emotional or mental illness, 28 C.F.R. § 35.108(b), and gender dysphoria is a disorder recognized by the DSM-5.⁷

Complainant's gender dysphoria substantially limits several major life activities and led to her seriously harming herself. Because UDOC failed to provide her equal access to health care services and reasonable modifications for her gender dysphoria to enable her to live consistently with her gender identity (female), Complainant's distress over the incongruence between her gender identity and assigned sex worsened, leading her to perform self-surgery to remove her own testicles in May 2023. Self-harm is a well-known risk of untreated gender dysphoria.⁸

⁵ Courts have found that an individual with gender dysphoria may state a claim under the ADA. *See Williams v. Kincaid*, 45 F.4th 759 (4th Cir. 2022), *cert. denied*, 143 S. Ct. 2414 (2023) (reversing motion to dismiss, and finding gender dysphoria falls outside the ADA's exclusion of gender identity disorder); *Doe v. Hosp. of Univ. of Pennsylvania*, 546 F. Supp. 3d 336, 350 (E.D. Pa. 2021) (denying motion to dismiss ADA claim where plaintiff alleged her gender dysphoria substantially limited her occupational functioning); *Doe v. Triangle Doughnuts, LLC*, 472 F. Supp. 3d 115, 135 (E.D. Pa. 2020) (finding employee's allegations were sufficient to state ADA hostile work environment claim based on gender dysphoria); *cf. Griffith v. El Paso Cnty. Colorado*, No. 21-CV-00387-CMA-NRN, 2023 WL 3099625, at *6 (D. Colo. Mar. 27, 2023) (adopting analysis of Magistrate Judge that "as a matter of statutory construction, gender dysphoria is not excluded from the ADA's protections."), *appeal filed on other grounds*, No. 23-1135 (filed Apr. 26, 2023).

⁶ 28 C.F.R. § 35.108(a)(2)(i); 42 U.S.C. § 12102(4)(A). "Substantially limits" and "major life activity" are not "demanding standards." 28 C.F.R. § 35.108(c)(2)(i), (d)(1).

⁷ Although the ADA excludes "gender identity disorders not resulting from physical impairments" from the definition of "disability," 42 U.S.C. § 12211(b)(1), gender dysphoria is a distinct condition and is not subject to this exclusion.

⁸ *See Williams v. Kincaid*, 45 F.4th 759, 768 (4th Cir. 2022), *cert. denied*, 143 S. Ct. 2414 (citing Fourth and Ninth Circuit caselaw for the propositions that, "left untreated, gender dysphoria can cause, among other things, depression, substance use, self-mutilation, other self-harm, and suicide," and "[f]ailure to follow an appropriate treatment plan [for gender dysphoria] can expose transgender individuals to a serious risk of psychological and physical harm" (internal citations omitted)).

2. *UDOC Denied Complainant Equal Access to Health Care Services and Imposed Eligibility Criteria for Treatment for Gender Dysphoria that are not Required for Treatment of Other Health Conditions*

Under Title II, UDOC must provide individuals with disabilities an equal opportunity to participate in and benefit from UDOC services, including health care services. 28 C.F.R. § 35.130(b). UDOC did not satisfy this mandate in its provision of health care services to Complainant. By making Complainant's access to care for her gender dysphoria contingent on a biased and prolonged approval process, UDOC failed to provide her an equal opportunity to benefit from its health care services. Instead, UDOC delayed and denied Complainant's access to health care for fifteen months because of her disability. Even after UDOC began providing Complainant with hormone treatment, it did not do so safely or appropriately. The medical care that UDOC provided Complainant for her gender dysphoria resulted from policies and decisions rooted in the type of stigma and discriminatory views that the ADA aims to eradicate. By denying Complainant equal access to its health care services because of her gender dysphoria, UDOC violated the ADA.

Title II also prohibits a public entity from imposing unnecessary eligibility criteria that screen out or tend to screen out individuals with particular disabilities from fully and equally enjoying one of the public entity's services. 28 C.F.R. 130(b)(8). UDOC violates this prohibition by requiring individuals with disabilities seeking health care for gender dysphoria, including Complainant, to complete an unnecessary and lengthy multistep evaluation process while not imposing similar burdens on individuals seeking care for other conditions.

3. *UDOC Failed to Make Reasonable Modifications to Avoid Discrimination on the Basis of Complainant's Gender Dysphoria and Afford her Equal Access to its Programs*

UDOC failed to meet its obligation under Title II to reasonably modify its policies, practices, or procedures where necessary to avoid discriminating against Complainant based on her disability. 28 C.F.R. § 35.130(b)(7)(i). These reasonable modifications included providing Complainant access to gender affirming clothing and self-care items from the commissary, individually assessing her housing requests and needs, taking steps to avoid cross-gender searches, and making modifications to allow her to complete rehabilitative programming. There is no indication that providing any of these modifications would fundamentally alter UDOC's programs, services, or activities, or unduly burden UDOC. *See* 28 C.F.R. § 35.130(b)(7)(i).

Remedial Measures

UDOC has violated and continues to violate Title II of the ADA through its discriminatory treatment of Complainant. To remedy these violations, and to protect the civil rights of other individuals with gender dysphoria, UDOC should promptly implement corrective measures, including:

1. Adopt, revise, and implement relevant policies, practices, and procedures to ensure UDOC provides individuals with gender dysphoria an equal opportunity to participate in and benefit from UDOC services, programs, and activities. This includes providing health

care services for gender dysphoria consistent with UDOC's treatment of other medical conditions.

2. Reasonably modify UDOC policies, practices, and procedures when necessary to ensure that individuals with gender dysphoria have equal access to all UDOC services, programs, and activities including commissary, pat and visual searches, housing, and required and optional programming.
3. Train UDOC employees on the requirements of Title II of the ADA.
4. Designate employees to coordinate UDOC's overall efforts to comply with Title II and this Agreement and to coordinate each UDOC facility's ADA compliance efforts, including investigating and resolving ADA complaints and grievances with respect to gender dysphoria.
5. Provide the United States with access to facilities and files, and written status reports 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.
6. Pay compensatory damages to Complainant and provide otherwise appropriate relief.

We hope to work together with you to resolve this matter cooperatively through a court-enforceable consent decree that brings UDOC into compliance with the ADA. If we are unable to reach such a resolution, the Attorney General may initiate 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 the Disability Rights Section of the Civil Rights Division, within 14 days of the date of this letter if UDOC is interested in working with the United States to reach an appropriate resolution.

Sincerely,

/s/ Rebecca B. Bond

Rebecca B. Bond
Chief
Disability Rights Section

cc: Amanda Berndt
Chief, Civil Division
District of Utah