

September 7, 2021

Via Email

Tiffany Smith-Anoa'i
Executive Vice President
Diversity, Inclusion & Communications
CBS Entertainment
7800 Beverly Boulevard
Los Angeles, CA 90036

Via Email

Maury McIntyre
President and Chief Operating Officer
Television Academy
5220 Lankershim Boulevard
Los Angeles, CA 91601

RE: 73rd Primetime Emmy Awards: Complaint of Violations the Americans with Disabilities Act (ADA) and California Civil Rights Laws – 42 U.S.C. § 12182; Cal. Civ. Code § 51(f); Cal. Health & Safety Code § 19955

Dear Ms. Smith-Anoa'i and Mr. McIntyre:

The Disability Rights Education and Defense Fund (DREDF) and Law Office of Michelle Uzeta represent Oscar-nominated director and sound designer James LeBrecht regarding the inaccessibility of the stage constructed for use at the 73rd Primetime Emmy Awards on September 19, 2021.

We understand that the Emmy Awards will be held at L.A. Live's Event Deck, a large, highly flexible, and customizable indoor/outdoor event space sited directly behind the Microsoft Theater. Despite the space and flexibility that the Event Deck provides, we understand that your organizations have built a stage for the Awards that is inaccessible from a front approach. The inaccessible stage violates the Americans with Disabilities Act (ADA) and California civil rights laws, and must be immediately remediated.

Mr. LeBrecht has repeatedly endeavored to educate CBS Entertainment and the Television Academy about their obligations under the ADA to provide an accessible stage. He first contacted the Academy on these issues in April 2021.

When his efforts went nowhere, he reached out to the undersigned counsel to initiate legal action. We seek immediate action to eliminate the unlawful access barriers.

I. Building an Emmy Stage that Does Not Include an Accessible Route that Directly Connects the Seating Area to the Stage Violates Title III of the ADA.

The Emmy Awards at the Event Deck is a place of public gathering or entertainment covered by Title III of the ADA. 42 U.S.C. § 12181(7)(C) & (D); 28 C.F.R. § 36.104. Title III prohibits disability discrimination by public accommodations: "No individual shall be discriminated

against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.” 42 U.S.C. § 12182(a).

Disability discrimination prohibited by Title III of the ADA includes “a failure to design and construct facilities ... that are readily accessible to and usable by individuals with disabilities.” 28 C.F.R. § 36.401(a)(1). Title III also requires that “[a]ny alteration to a place of public accommodation or a commercial facility ... shall be made so as to ensure that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.” 28 C.F.R. § 36.402(a)(1). New construction and alterations must comply with the 2010 ADA Standards. 28 C.F.R. § 36.406(a)(3); 28 C.F.R. § 36.402(b)(2) (“If existing elements, spaces, or common areas are altered, then each such altered element, space, or area shall comply with the applicable provisions of [the Standards].”).

ADA Standard § 206.2.6 applies to the new stage at the Event Deck, and states:

Where a circulation path directly connects a performance area to an assembly seating area, an accessible route shall directly connect the assembly seating area with the performance area.

ADA Standard § 206.2.6 (emphasis added); *see also* ADA Standard § 106.5.29 (a circulation path is a “way of passage provided for pedestrian travel”); *S.F. by K.F. v. Sch. Dist. of Upper Dublin*, No. 17-4328, 2021 WL 1979501, 2021 U.S. Dist. LEXIS 94003, at *38 (E.D. Pa. May 18, 2021) (finding that the language of the standard “unmistakably calls for an accessible path connecting a stage and seating area that corresponds to a circulation path connecting that same stage and seating area”).

As a feature that is new construction and/or an alteration, the stage for the Emmy Awards at the Event Deck violates the ADA because it provides paths that “directly connect” the attendee seating area to the stage for individuals who walk, but not for individuals with mobility disabilities, including individuals who use wheelchairs. The directly connecting paths have stairs but no ramp.

Ms. Smith-Anoa'i has advised Mr. LeBrecht that individuals who cannot climb the stairs to the stage can go backstage to access the stage. This is not a directly connecting route as required by the ADA Standard. Another suggestion is that a staff member can bring a microphone to individuals' seating area. Neither approach complies with the ADA, and each conveys disrespect and exclusion. Separate is never equal.

The ADA Standards apply to new construction and alterations regardless of whether your organizations are aware of any particular individuals with disabilities who will be using the facility or portion of the facility at issue. *Accord Sch. Dist. of Upper Dublin*, 2021 U.S. Dist.

LEXIS 94003, at *44. Congress intended that individuals with disabilities would be able to rely on the Standards when encountering facilities built new or altered after the effective date of the ADA.

CBS Entertainment and the Television Academy have disregarded plainly applicable standards for disability access, and are in violation of the ADA and California civil rights laws. 42 U.S.C. § 12182; Cal. Civ. Code § 51(f); Cal. Health & Safety Code § 19955.

II. The Unnecessary Use of a Segregated Route to the Emmy Stage Frustrates the Purposes of the ADA by Discounting the Presence and Participation of People with Disabilities.

The ADA was enacted “to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities.” 42 U.S.C. § 12101(b)(2). Its passage was premised on Congress’s finding that discrimination against disabled people is “most often the product, not of invidious animus, but rather of thoughtlessness and indifference,” of “benign neglect,” and of “apathetic attitudes rather than affirmative animus.” *Chapman v. Pier 1 Imps. (U.S.), Inc.*, 631 F.3d 939, 944-45 (9th Cir. 2011) (citing *Alexander v. Choate*, 469 U.S. 287, 295-96 (1985)).

For this reason, the concept of “discrimination” under the ADA is not limited to obviously exclusionary conduct, such as a sign stating that persons with disabilities are unwelcome or an obstacle course leading to a store’s entrance. The ADA also prohibits more subtle forms of discrimination — such as difficult-to-navigate restrooms and hard-to-open doors — that interfere with disabled individuals’ “full and equal enjoyment” of places of public accommodation. *Id.* at 945; *see also Baughman v. Walt Disney World Co.*, 685 F.3d 1131, 1135 (9th Cir. 2012) (“The ADA guarantees the disabled more than mere access to public facilities; it guarantees them ‘full and equal enjoyment.’ ... Public accommodations must start by considering how their facilities are used by non-disabled guests and then take reasonable steps to provide disabled guests with a like experience.”).

For an individual who uses a wheelchair, the symbolic meaning of the inaccessible Emmy stage design is simple and direct. The staired main approach, through which nondisabled award winners are welcomed, celebrated and able to fully enjoy and appreciate the Emmy experience, is off-limits. The recessed backstage entrance, which takes longer to access and requires that wheelchair users retreat temporarily out of sight, promotes the perception of disabled people as afterthoughts and second-class citizens. The message sent to individuals with disabilities, both attending and viewing the event, is “you do not belong here.”

The Emmy stage will be the focal point for nominees, award winners and the viewing audience. But CBS Entertainment and the Television Academy have shown little thought to the experiences of nominees with disabilities. By unnecessarily requiring individuals with mobility disabilities to use a segregated, partially hidden, and more burdensome route to get from the seating area to the Emmy stage, you are isolating, segregating, and stigmatizing individuals with

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disabilities. The use of unnecessary segregated stage entrances denies disabled people full and equal enjoyment of the Emmy experience, and frustrates the purposes and fundamental principles of the ADA.

Demand for Immediate Action

As the organizations utilizing the Event Deck to host the Emmys, CBS Entertainment and the Television Academy are responsible for ensuring that the facility including the stage is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

Please contact us immediately to detail your plans to remedy the inaccessible stage prior to Emmy Awards event on September 19. We can be reached at ccenter@dredf.org and michelle@uzetalaw.com.

Sincerely,

Disability Rights Education & Defense Fund



Claudia Center

Law Office of Michelle Uzeta



Michelle Uzeta

cc:

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