

1.1.E.7 Americans with Disabilities Act (ADA)

I Policy Index:



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II Policy:

The Department of Corrections (DOC) shall provide a mechanism to process requests for reasonable modifications of policies, practices and procedures to accommodate the physical and mental impairments or limitations of offenders and visitors with disabilities, unless it can be demonstrated that doing so would fundamentally alter the nature of the services, programs or activities of the DOC.

III Definitions:

ADA Director:

The staff person designated by the Secretary of Corrections to act as the ADA Standards Administrator. The ADA Director shall be knowledgeable regarding the provisions of the Americans with Disabilities Act (ADA) and the ADA Standards for Accessible Design within a correctional setting. The ADA Director is responsible for coordinating efforts and processes to comply with the requirements of ADA with respect to offenders.

ADA Facility Coordinator:

The staff person assigned to facilitate ADA compliance at each DOC facility and investigate all allegations and complaints by offenders with disability related issues made known within the facility. The ADA Facility Coordinator shall have the authority to make recommendations to the Warden and ADA Director and to implement approved corrective action to ensure compliance with the ADA.

Americans with Disabilities Act (ADA):

Federal legislation passed in 1990 with subsequent revisions that prohibit discrimination against people with disabilities. Under this Act, discrimination against a person with a disability is illegal in employment, transportation, public accommodations, communications and government activities.

Communication Disability:

Vision, hearing or speech disability.

Disability:

The ADA defines a disability as: (1) a physical or mental impairment that substantially limits one or more major life activities; (2) a record of having such impairment; or (3) being regarded as having such impairment.

Effective Communication:

Communication with persons who are deaf, hard of hearing, have a speech disability, are blind or have low vision that is as effective as communication with others without a disability. The purpose of effective

communication is to ensure the person with a vision, hearing or speech disability can communicate with, receive information from, convey information to and understand the context of communication with DOC staff.

Facility:

For the purpose of this policy, facility refers to individual offender housing locations and campuses within the South Dakota Department of Corrections (DOC), as well as any facility used by the DOC, either directly or through contractual, licensing or other arrangements with public or private entities, to house or provide services to offenders. The DOC owns, leases and operates facilities, including the following:

South Dakota State Penitentiary (including Jameson Prison Annex (JPA))
Sioux Falls Community Work Center
Mike Durfee State Prison
Yankton Community Work Center
Rapid City Community Work Center
South Dakota Women's Prison (including E Unit)
Pierre Community Work Center

"Facility" also means all or any portion of buildings, structures, sites, complexes, equipment, vehicles or other conveyances, roads, walks, passageways, parking lots, or other real or personal property, including the site where the building, property, structure, or equipment is located. It includes both indoor and outdoor areas where human-constructed improvements, structures, equipment, or property.

Informal Resolution:

Verbal or written contact between a person to whom the complaint relates and staff member in which the problem is settled by agreement of both parties in an informal setting.

Persons with Disabilities:

Anyone who has a physical or mental impairment that substantially limits one or more major life activities; "major life activities" includes functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, and working; "substantially limits" means that the impairment imposes a significant barrier in the performance of a major life activity; anyone who has a record of such an impairment; and anyone who is regarded as having such an impairment.

New Admission Inmates:

For the purposes of this policy, a new admission inmate is any adult inmate, parole violator, parole detainee, new court admit, inmate admitted from the community to the Community Transition Program (CTP) or inmate from another jurisdiction temporarily housed at a DOC facility, who at the time of admission, has not been assessed for a disability in the previous ninety (90) days prior to admission.

Qualified Interpreter:

An interpreter who, via a Video Remote Interpreting (VRI) service or on-site appearance, is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary, given the language, skills and education of the individual. Includes sign language interpreters, oral transliterators and cued language transliterators.

Reasonable Modification:

A public entity shall 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 making the modifications would fundamentally alter the nature of the service, program, or activity or would result in undue financial or administrative burden, 28 C.F.R. Section 35.130(b) (7). The DOC may require reasonable advance notice from offenders requesting aids or services, based on the length of time needed to acquire the aid or service, but the DOC may not impose excessive advance notice requirements.

IV Procedures:

1. Approach:

- A. The Department of Corrections (DOC) has zero tolerance for discrimination against offenders with a disability. In addition, state law and Bureau of Human Resources policy prohibits discrimination against staff, visitors, offenders or others on the basis of race, color, creed, religion, sex, ancestry, disability or national origin. Designated staff will track, investigate and document all allegations and complaints of discrimination.
1. The Secretary of Corrections will designate an ADA Director for the Department of Corrections. Duties of the ADA Director may include but are not limited to:
 - a. Regular review and evaluation of current ADA related policies, services, practices and the effects thereof, and recommend any necessary changes to assist with DOC's compliance with the ADA Standards and regulations as they apply to the DOC (See DOC policy 1.1.A.2 *Policy and Operational Memorandum Management*).
 - b. In consultation with the ADA Facility Coordinator, assist with the development and implementation of unit plans, post orders and facility operational memorandums pertaining to ADA compliance.
 - c. Oversee and assist with ADA education and training for staff, contractors and volunteers. Facilitate ongoing training for ADA Facility Coordinators.
 - d. Review and aid investigations into allegations of discrimination or non-compliance with the requirements of ADA and possible violations of ADA responsibilities. Review and document the outcomes of such investigations and recommend changes to achieve compliance.
 - e. Schedule and conduct regular facility ADA compliance audits/reviews and maintain documentation of the results, findings and recommendations.
 - f. Communicate with DOC administrative staff regarding facility ADA compliance and convey any resources or materials required to achieve and maintain ADA compliance.
 - g. Keep up-to-date with all new information concerning ADA responsibilities and legal requirements for the protection of offenders with disabilities.
 - h. Meet with and communicate with ADA Facility Coordinators on a regular basis to discuss and review all ADA related complaints received and requests for administrative remedy filed by offenders concerning ADA issues or complaints, including the response or resolution provided.
 - i. In consultation with the ADA Facility Coordinators, recommend structural changes within the facility to the Warden, where warranted, to comply with ADA requirements.
 - j. In consultation with classification staff, as requested, ensure inmates with disabilities are placed in facilities appropriate to their needs, given their disability, taking into consideration safety, security discipline, good order and legitimate penological interests of the DOC.
 2. Each Warden will designate and maintain an ADA Facility Coordinator to oversee all DOC facilities under the direction and authority of the Warden.
 - a. The Warden at the South Dakota State Penitentiary (SDSP) will appoint one coordinator to oversee SDSP, Jameson Annex and the Sioux Falls Community Work Center.
 - b. The Warden at Mike Durfee State Prison (MDSP) will appoint one coordinator to oversee MDSP, Yankton Community Work Center and Rapid City Community Work Center

- c. The Warden at South Dakota Women's Prison (SDWP) will appoint one coordinator to oversee SDWP, Unit E and the Pierre Community Work Center.
3. ADA Facility Coordinators will be provided adequate training to perform the tasks of the position and have sufficient time and authority to coordinate, implement and oversee the facility's compliance with ADA responsibilities. Coordinators must have authority to investigate and respond to ADA related concerns communicated by any inmate under the direct or indirect authority of the Warden, including Interstate Compact inmates. Coordinators shall report directly to the Warden or designee. The Coordinator's duties include but are not limited to the following:
 - a. Knowledge of the ADA and its requirements as it applies to the correctional environment.
 - b. Review existing and proposed facility practices and procedures for compliance with ADA requirements and DOC policy. Provide recommendations to the ADA Director for potential corrective action.
 - c. Document and track all allegations of non-compliance with ADA made by inmates, the results of the investigation, response, disposition and remedies provided.
 - d. Report ADA issues to the ADA Director and coordinate with the ADA Director on relevant ADA related information and submit monthly reports, which may include information to be presented during the monthly metrics briefing.
 - e. In consultation with the Warden and ADA Director, the ADA Coordinator will coordinate requests for accommodation, including:
 - 1) Evaluation of the inmate by qualified outside experts, as determined necessary.
 - 2) Transfer of the inmate to an appropriate facility, or moves within a facility, as determined appropriate and necessary.
 - 3) Facilitate inmate access to required auxiliary aids, devices and equipment, consistent with the professional evaluation of the disability, recommendation provided by the professional and consideration to the safety, security, discipline, good order and legitimate penological interests of the facility.
 - f. Notify unit staff at the facility of any disability accommodation approved for an inmate and any required modification of unit procedure(s) that has been approved, including the time frame that shall apply.
 - g. Maintain records of requests by inmates for auxiliary aids and services as well as any auxiliary aids, services or accommodations provided to an inmate without specific request by an inmate.
 - h. Maintain records regarding the disposition of each inmate ADA compliant received.
 - i. Ensure every approved ADA accommodation follows an inmate throughout his or her incarceration from housing unit to housing unit or facility to facility, and occurs without unreasonable disruption of required services or approved accommodations provided to the inmate.
 - j. Documentation and reporting of any isolated or temporary suspension of ADA modifications or accommodations that affects an inmate(s), including, but not limited to, the amount of time of the delay and the reasons for such delay.

2. Staff Training:

- A. ADA related education and training is mandatory for staff of designated units of the DOC. ADA training will be included in the pre-service curriculum provided to staff and volunteers assigned duties that include supervision of offenders. Staff and volunteers required to complete ADA training will receive

training on ADA related topics a minimum of every three years. Training goals shall include providing knowledge, skill and abilities necessary to conform to all policies and procedures regarding ADA and ensure fair treatment of offenders with disabilities.

1. The training curriculum will be reviewed and approved a minimum of once a year by the ADA Director and Training Director. Additions or revisions to the training and curriculum will be coordinated with the ADA Director and DOC Training Director.
2. The ADA Director will assist the Training Director and institutional trainers in organizing approved ADA training material.
3. ADA training may include a rotation of topics, including but not limited to the following:
 - a. How to effectively communicate with those who have communication disabilities.
 - b. How to properly identify offenders who may have a disability and the process to notify the ADA Coordinator.
 - 1) Staff and volunteers having contact with an offender who requires accommodation must be informed of the need for the accommodation, including any aids or services necessary to ensure effective communication with the offender. An offender's identity as needing accommodations, aids or services due to a disability will not be treated as confidential medical information.
 - c. Proper implementation of ADA.
 - d. Explanation of reasonable accommodations that can be provided to offender with a disability.
 - e. The safe operation, repair, upkeep and handling of auxiliary aids and proper techniques and procedures for assisting those who utilize those aids.

3. Inmate Admission and Assessments:

- A. Staff assigned to the following programs or services shall report all inmates identified as having a disability that substantially limits one or more major life activities of the inmate or has a record of having a disability or the staff person regards or perceives has having a disability. Staff may identify inmates with a disability by asking the inmate if they wish to disclose any disability, including any request the inmate has for auxiliary aids, services or reasonable modification, through staff observation or examination of any documentation or records that accompany the inmate upon admission.
 1. Responses will be documented in COMS as a case note.
 2. Inmates identified with a disability will be assigned an appropriate disability code in COMS.
- B. DOC staff assigned to the Admissions and Orientation (A&O) unit of the institution (See DOC policy 1.4.A.2 [Inmate Admission](#)).
 1. Admissions and Orientation (A&O) staff will advise each new admission inmate of his/her right to reasonable accommodations. Notice is also provided within the Inmate Living Guide, which is made accessible to all inmates upon admission to a DOC facility.
- C. Health Service staff will assess all new admission inmates for hearing, medical, mobility or visual disabilities. Health Services will document any inmate identified as having a disability by assigning the inmate an appropriate disability code.

1. Inmates may be identified by Health Service staff as having a disability any time an inmate's major life activities are substantially limited by the inmate's physical health.
- D. Behavioral Health will document any inmate identified as having a disability by assigning the inmate an appropriate disability code in COMS. Behavioral Health Service staff will assess all new admission inmates for mental health disabilities.
1. Inmates may be identified by Behavioral Health Service staff as having a mental health disability when an inmate's major life activities are substantially limited by their mental health.
- E. Education/Employment/Vocational staff will document any inmate identified as having a learning or speech and/or language disability by assigning the inmate an appropriate disability code in COMS. Education/Employment/Vocational staff will document any inmate found to have such a disability during assessment or testing of the inmate.
- F. All staff assigned to the institution will remain alert for inmates with disabilities who are not assigned a disability code.
- G. Staff will contact the Facility ADA Coordinator any time an inmate requests accommodation, aids or services; or staff receives information or knowledge supporting an inmate may have a disability and may require accommodation. The Coordinator will review the request or referral within five (5) business days of receipt. The Coordinator may consult with Health Services or education staff to determine if records, evaluations, assessments or other documentation exists to support or verify the inmate has a disability and requires accommodation, including any accommodation provided to the inmate in the past.
1. Staff will request the inmate sign a release of information to obtain or disclose outside records or information that may exist. If consent for the release of information is not granted by the inmate, the inmate's refusal will be noted and the request will be considered without the information.
 2. The inmate may be referred to a provider/qualified expert for evaluation or assessment if such an evaluation or assessment is supported by the program or service provider and is consistent with the legitimate penological interests of the DOC.
 3. Any recommendation or request for accommodation will be forwarded to the Facility ADA Coordinator. The Coordinator will consider and document any adverse impact such accommodation may have on the security, discipline, good order or legitimate penological interests and whether the accommodation may fundamentally alter the nature of the service, program or activity at the facility or result in undue financial or administrative burden to the Department.
 - a. Security staff may be consulted as deemed necessary and appropriate by the Coordinator to review and discuss security or safety issues.
 - b. Any changes made to a recommendation for reasonable modification to accommodate an inmate with disabilities will be forwarded to the ADA Director, who will document the possible change and discuss these with designated staff.
 4. Accommodations may include, but are not limited to, a qualified sign language interpreter, auxiliary aids, services and/or devices such as canes, trapeze bars, prostheses, orthopedic shoes, braces, air mattresses, wheelchair, shower chair, assignment to a lower bunk or other accommodation approved by the Health Service Staff in consultation with the Facility ADA Coordinator.
 - a. Adaptive equipment approved and issued to inmates shall be routinely cleaned, repaired, maintained and generally kept in a safe, operable condition.

- H. Approved accommodations for an inmate with a disability will be provided for the duration of the inmate's time in custody and will transfer with the inmate from facility to facility, unless terminated because the inmate no longer needs the accommodation.
1. Documentation of the initial determination of a disability and accommodations will be maintained in COMS under Case management (restrictions) Medical Equipment permitted/medical restrictions. Each request or need for accommodation will be considered individually, on a case-by-case basis. Documentation in COMS will reflect the individual specifics of the accommodation approved for the inmate.
 2. If an inmate's request for accommodation is limited, modified or denied, the inmate will be notified of and advised of their right to file a grievance through the Administrative Remedy process (See DOC policy 1.3.E.2 [Administrative Remedy for Inmates](#)).

4. Effective Communication:

- A. The DOC shall take appropriate steps to ensure communications with offenders with communication disabilities are as effective as communications with other offenders (§35.160)
- B. All facilities will have appropriate auxiliary aids and services where necessary to afford an inmate with a communication disability equal opportunity to participate in and enjoy the benefits of the service, program or activity offered to inmates without a communication disability (§35.160). Such aids and services will help facilitate effective communication with the inmate.
- C. Inmates with a communication disability will have equal access to common areas of the facility accessible to general population inmates.
- D. In determining what type of auxiliary aid and service is necessary to accommodate the communication needs of an offender who is deaf, has significant hearing loss, is blind-deaf or has a speech disability, the DOC will give primary consideration to the requests of the offender with the disability (§35.160). The following accommodations may be provided but is not intended to be an exhaustive list. Each request received or need identified, will be considered on a case-by-case basis.
1. Qualified interpreters will be available on-site or via video remote interpreting (VRI).
 2. Qualified interpreters must be able to interpret effectively, accurately and impartially, both receptively and expressively, using any necessary specialized vocabulary, given the language skills and education of the inmate.
 3. Availability of Text Telephone/Teletype Terminal Teletypewriter (TTY).
 4. A telephone with volume control will be available on each housing unit where an inmate with a hearing or speech disability resides.
 5. Videophones and services.
 6. Telecommunications Relay Service (TRS).
 7. South Dakota Relay or interpretive services offered through Video Relay Services (available on the inmate tablets).
 8. Captioned telephone or computer.
 9. Additional time for telephone calls to account for the time required to complete a telephone call using auxiliary aids or services, such as, for example, South Dakota Relay, TRS, TTY, or Video Relay Services or Video Remote Interpreter.
- E. In the event a qualified interpreter is requested by the inmate to facilitate effective communication, the ADA Facility Coordinator will ensure the interpreter or interpreter service is provided and available in a timely manner, consistent with this policy.

1. The activity, service or program requiring interpretation may be delayed until an interpreter or interpreter service is made available, or the inmate may elect to delay participation in the activity, hearing, service or program until an interpreter is available.
 - a. In an emergency involving an imminent threat to the safety or welfare of an individual or the public, or where the security of the facility is at risk, those services and resources readily available at that time will be used to communicate with an inmate with a communication disability.
 2. The DOC will maintain a contract with one or more approved interpreter service agencies, including on-site interpreters and VRI, as necessary, to ensure effective communication for inmates requiring accommodation. This may include hiring individual interpreters on a fee for service basis. Documentation shall be retained for all active interpreter services.
 3. Qualified interpreters or interpreter services will be available twenty-four hours a day, seven (7) days a week to schedule services.
- F. The ADA Facility Coordinator will document all oral and written requests received for interpreters or interpreter services by an inmate, including the action taken to respond to or meet the request of the inmate.
- G. Inmates who are blind or have low vision will be provided appropriate auxiliary aids and services upon request. This is not an exhaustive list of accommodations. Each request will be considered on a case-by-case basis.
1. Information in large print.
 2. Braille.
 3. Electronically, using a computer screen-reading program.
 4. Audio recording of printed material/audio books.
 5. Qualified reader- which is defined as someone who is able to read effectively, accurately, and impartially, utilizing any necessary specialized vocabulary.
 6. Verbal updates regarding schedules and activities.
 7. Assistance moving about the facility, as required.
- H. Determination of an appropriate auxiliary aid or service depends in part on the method of communication normally used or requested by the inmate. Primary consideration must be given to the expressed choice of the inmate who has the communication disability.
- I. The inmate's choice of communication will be accommodated, unless it can be demonstrated that another equally effective means of communication is available, or that the use or means of accommodation requested by the inmate would result in a fundamental alteration of the service or activity, or in an undue burden (significant difficulty or expense) to the DOC.
1. A determination of "undue burden" must be made by the Warden, Director of Prisons or Secretary of Corrections or designee.
 2. In the case of a finding of "undue burden" the DOC has an obligation to provide an alternative aid or service that provides effective communication. The ADA Facility Coordinator will help coordinate a determination whether such an alternative exists and identify the alternative.
- J. Inmates who prefer a different method of communication may submit a request to the ADA Facility Coordinator via the *Inmate Request for Reasonable Accommodation* (See [Attachment 1](#)).

- K. The following non-exhaustive list provides examples of activities, services, programs or circumstances where the DOC will provide appropriate auxiliary aids and services to an inmate with a communication disability who has requested the accommodation:
1. Critical communication, complex information, lengthy exchanges, or anything involving legal due process;
 2. Intake;
 3. Orientation;
 4. Classification;
 5. Medical care and health programs such as physical and medical screenings and treatment, dental, visual, and/or mental health examinations or treatment, and drug and alcohol recovery services;
 6. Counseling or psychological services;
 7. Educational and vocational programming;
 8. Work Release programs and programs where credit is earned for good behavior or participation;
 9. Due process hearings, including disciplinary hearings, and a hearing in which the inmate is a witness;
 10. Classification review interviews;
 11. Grievance interviews or processes;
 12. Religious services;
 13. Non-criminal investigations;
 14. Pre-release instructions; and
 15. Jobs within the prison system.
- L. The ADA Facility Coordinator will assess the effectiveness and availability of communication accommodations offered to individual inmates at the facility a minimum of every 6 months by communicating with the inmate. The assessments will continue until the service or accommodation is terminated, either by request of the inmate or transfer or discharge of the inmate from the facility. The assessment and results will be documented in COMS as a case note.
- M. Visual alerts or other suitable notification system must be provided with the room or cell of those inmates who are deaf or hard of hearing to ensure they do not miss announcements, fire alarms, meal times, recreation, education, work assignments or other auditory information provided to those inmates who are not deaf or hard of hearing.
- N. Staff will ensure inmates who are deaf or hard of hearing are cuffed or restrained in a manner that permits effective communication (e.g., cuffing inmates in the front so they can sign, having one hand free so they can write) unless legitimate security or safety concerns dictate otherwise.
- O. Inmates who are deaf or hard of hearing will have equivalent access to captioned television programming as other inmates of the same classification level and status have to television.
- P. Health Services will supply appropriate types of hearing aid, or hearing aids if required, and cochlear processor replacement batteries as needed at no cost to inmates requiring such adaptive devices (See DOC policy 1.4.E.10 [Medical Co-Payment Fees](#)). Batteries will be available within 24 hours of the inmate's request, including weekends and holidays.
- Q. Health Services will send an inmate's hearing aids, cochlear processors and other such devices to appropriate repair companies promptly upon receipt of notice or request for repair by the inmate.
1. The date the device was sent out for repairs will be documented in the inmate's medical file.
 2. Written documentation of the repairs completed will be available for review by the inmate upon request.
 3. The inmate's need for effective communication will be met while the device is being repaired.

- R. If an inmate with a communication disability expresses or demonstrates a medical condition or need that cannot wait for availability of a qualified interpreter or service, or staff suspects the inmate may be experiencing a medical emergency requiring immediate treatment or response, staff will respond by providing the inmate the same medical care, treatment, evaluation or service that would be provided to an inmate without a communication disability under similar circumstances.
1. Staff will use the most effective means of communication available to them at the time.
 2. An interpreter or other appropriate accommodation or service will be made available to the inmate as soon as reasonably possible, as requested by the inmate.

6. Inmate Request for Accommodation:

- A. Inmates requesting accommodation must complete the *Inmate Request for Reasonable Accommodation* form (See [Attachment 1](#)). One additional page may be attached to the form if necessary. Any inmate requiring assistance with the request should contact a member of their unit team.
- B. Requests will be sent to the ADA Coordinator. Inmates should submit a request any time they believe they have a disability that requires accommodation. This process is different than routine requests for medical care. Inmate requests for medical care should be sent directly to Health Services or Behavioral Health Services or routed through normal sick call. If Health Services or Behavioral Health Services receives a request for disability accommodation by an inmate, staff will promptly notify the ADA Coordinator.
- C. Upon receipt of the request, the ADA Coordinator will discuss the request for accommodation with the inmate and designated staff with authority to take action on the request.
- D. The ADA Coordinator may request additional information to facilitate a response to the request.
- E. After compiling the necessary information, the ADA Coordinator, in conjunction with the ADA Director, will respond in writing to the request within 5 days. A copy of the response will be sent to the inmate, Warden and ADA Director. A copy of the response will also be documented in the inmate's record in COMS.
- F. The facility will make reasonable accommodation to the known disabilities of an inmate, taking into account the legitimate penological goals of the DOC and the security, safety, discipline and good order of the institution. Accommodations that fundamentally alter the nature of the service or program provided, or constitute an undue financial or administrative burden require review by the ADA Director, Warden and Director of Prison Operations.
1. If a request for accommodation is determined to be an undue financial or administrative burden or a fundamental alteration, the ADA Coordinator, in conjunction with the ADA Director and Warden, will ascertain whether other alternatives exist which may provide some level of accommodation.
 2. If the inmate is approved for accommodation, the inmate will be added to the institution's list of inmates with approved accommodations. A description of the accommodation will be included in the documentation.
 - a. Reasons for removing an inmate from the list must be documented.
 - b. Documentation will include the staff responsible for ensuring the accommodation is offered to the inmate, i.e. responsibilities assigned to Health Services and responsibilities assigned to unit staff or security staff and will include any information required by staff to carry out their responsibilities.

3. Accommodations may differ, depending on the abilities of the inmate and nature of the program, activity, access and other relevant factors. All accommodations will be considered on a case-by-case basis.

7. Inmate Appeal:

- A. Inmates who believe they have been subjected to discrimination on the basis of a disability, including being denied access to programs or services because of their disability; or had their request for reasonable accommodation denied, in full or part, may request relief through the Administrative Remedy Process (See DOC policy 1.3.E.2 [Administrative Remedy for Inmates](#)).
- B. The inmate will submit any necessary documentation that substantiates and supports their request or complaint.
- C. Inmates may contact the Facility ADA Coordinator directly to report an ADA related issue or concern. Inmates will be provided assistance, upon request, submitting the request. All ADA-related issues or concerns will be addressed within 15 business days from the date the Facility ADA Coordinator is contacted regarding the issue or concern, or as soon thereafter as is reasonable given the nature and extent of the request. Any delay required beyond 15 business days to provide the accommodation must be thoroughly documented in writing in the inmate's record, and reported to the Facility ADA Coordinator or his designee.
- D. The inmate must cooperate in any resulting discussions initiated by staff assigned to address the request for accommodation. The inmate may be required to participate in evaluations or assessments to determine the extent of their disability and to identify appropriate and reasonable accommodations.
- E. The ADA Facility Coordinator will receive a copy of all requests for administrative remedy involving an ADA issue.
- A. Staff shall not discriminate against any inmate that opposes any act or practice made unlawful by the ADA or because the inmate made a charge, testified, assisted or participated in any manner in an ADA related investigation, proceeding or hearing. Staff shall not coerce, intimidate or threaten any inmate protected by the ADA (See §35.134). Staff shall not coerce, intimidate, threaten or interfere with any inmate filing an ADA complaint or encouraging another to file such a complaint regarding any right granted or protected by the ADA.
- F. If, during review of the inmate's request for administrative remedy it is determined a proposed action or accommodation would fundamentally alter the service, program or activities at the facility or would result in undue financial and administrative burden to the Department, the Warden and Secretary of Corrections must show that compliance with 35.150 (a) would result in such alteration or burden. All resources available for use in the funding and operation of the service, program or activity must be considered and the reasons supporting the conclusion and denial must be documented.

8. Inmate Access to Programs, Facilities, Activities, Benefits, Aids and Services:

- A. Inmates with a disability shall not be excluded from participation or denied benefits, aids and services provided to other inmates solely on the basis of their disability. This includes but is not limited to work, education, recreation and early release opportunities. Inmates with a disability will not be denied access to programs or activities offered or provided in a DOC facility because the area where such service, program or activity is offered is inaccessible or unusable by individuals with disabilities (See §35.149).
- B. Inmates with a disability will have access to all programs which they would otherwise be entitled and that are provided to other inmates without disabilities.

- C. Inmates with a disability shall be provided equal access to educational, vocational, work release, institutional employment, religious programs and opportunities for early release, whether mandatory or voluntary.
- D. The DOC is not required to allow inmates with a disability to participate in, or benefit from, services, programs, facilities, privileges, advantages or activities offered or provided, when, it is determined through reasonable judgement that such participation poses a direct threat to the health or safety of staff or others (See § 35.139 (a)).
 - 1. Reasonable judgment relies on current medical knowledge or the best available objective evidence to ascertain: the nature, duration, and severity of the risk posed by the inmate; the probability injury will actually occur; and whether reasonable modifications to policies, practices or procedures or the provision of auxiliary aids or services will mitigate the risk (See § 35.139 (b)).
 - 2. A direct threat is a significant risk to the health or safety of others that cannot be eliminated by a reasonable modification of policies, practices, or procedures, or by the provision of auxiliary aids or services to mitigate the risk. See 28 CFR § 35.139 (b) Direct threat.

9. Inmate Housing:

- A. Inmates with disabilities will be housed in the most integrated setting appropriate to meet the needs of the inmate and in a manner that ensures each inmate with a disability is housed in a cell with the accessible elements necessary to afford the inmate access to safe, appropriate housing (See §35.130, 35.152). Housing placement shall be made on the basis of criteria that is validated and dynamic and reflect the inmate's security and custody level, as well as safety and any special medical or behavioral health needs. Housing assignments shall be consistent with the inmate's AIMS code, PREA code and separation requirements.
 - 1. If an inmate requires a different housing assignment as an accommodation, the ADA Director will document information detailing the reasons substantiating the justification for the accommodation in COMS as a case note.
- B. When determining appropriate housing placement for inmates with a disability, the following will apply:
 - 1. Staff will not place inmates with a disability in facilities or units that exceed the inmate's security classification because there are no accessible cells or beds available in the facility or unit offering the appropriate supervision for the inmate's assigned classification.
 - 2. Staff will not place inmates with disabilities in designated medical areas, the infirmary or chronic care unit unless the inmate is actually receiving medical care or treatment and such placement is deemed appropriate by Health Service or Behavioral Health Services staff.
 - 3. Staff will not place inmates with disabilities in facilities or units that do not offer similar programs, services or activities to inmates as the facility where the inmate would ordinarily be housed, absent their disability and accommodation.
- C. Inmates with mobility disabilities will be provided with appropriate auxiliary aids and services, including but not limited to, access to wheelchairs and manually powered mobility aids, walkers, crutches, canes, braces, shower chairs or other similar devices designed to allow them to access areas of the facility typically accessible to all inmates (See §35.137).
- D. The Classification and Transfer Manager will ensure any documentation relating to the transfer of an inmate with a disability who has an accommodation is included in the transfer order. Inmates with a

disability who have an approved accommodation may be transferred provided the receiving institution can provide the approved accommodation to the inmate without significant or unreasonable interruption of the accommodation.

10. New Construction or Altered Part of a Facility:

- A. The DOC will comply with all applicable 2010 ADA accessibility standards when constructing any building or facility or altering any part of a DOC owned or occupied facility which is accessible to staff, the public or offenders. The design and construction of the new or altered part of the facility shall be readily accessible to and usable by individuals with disabilities.
 1. Projects that increase, expand or extend a facility's gross floor area or height of a facility are considered additions. Additions must comply with the requirements of the standards applicable to new construction.
 2. Alterations include remodeling, renovation, rehabilitation, reconstruction, restoration, resurfacing of paths or vehicle ways, and changes or rearrangements in structural parts, and change or rearrangements of walls and full-height partitions. Normal maintenance, reroofing, painting, or changes to mechanical and electrical systems are not considered alterations unless they affect the usability.
 3. Any alteration of a primary function area, defined as any area where offenders carry out one of more major activities, requires the altered primary function area and elements being altered, comply with the Standards. Alterations made to areas containing a primary function also require an accessible path of travel to the extent that it is not disproportionate to the cost. Spaces within a facility not considered primary function areas are entrances, corridors, restrooms or closets.
 - a. When altering a primary function area, the costs for additional alterations to comply with the Standards, beyond the cost of the primary alteration, are considered disproportionate if the costs for the additional alterations exceed 20 percent of the cost of the primary alteration.
- B. The DOC will ensure that if any portion of an existing facility is altered in such a way that affects, or could affect, the usability of the facility or portion thereof, said alteration will comply with, to the maximum extent feasible, the applicable 2010 ADA Standards.
 1. Full compliance with the Standards is not required if the DOC demonstrates that it is structurally impracticable to meet the requirements of the standard(s).
- C. Each newly constructed facility will provide mobility features for at least 3%, but no less than one, of the total number of cells/rooms allocated for housing inmates.
- D. The DOC will ensure each newly constructed or altered facility has accessible cells with mobility features complying with the 2010 ADA Standards.
 1. The term "new construction" shall mean each facility or part of a facility constructed by, on behalf of, or for the use of the DOC where construction commenced after January 26, 1992.
- E. As required by the 2010 ADA Standards, at least 2% but no less than one of the total numbers of cells/rooms shall be equipped with audible emergency alarm systems and visual alarms.
- F. Each facility shall have video phones and telephones available to inmates that include appropriate communication features such as volume control.

11. Suspension of Policy:

- B. Accommodations shall be maintained in operable working condition, including those features of facilities and equipment that are required to be readily accessible to and usable by those with disabilities (§ 35.133).
- C. In an emergency or disruption of normal institutional operation, or in furtherance of the legitimate penological interests of the facility or the DOC, any provision or section of this policy may be temporarily suspended. Notice of such isolated or temporary suspension shall be provided to the ADA Director and Secretary of Corrections. Any isolated or temporary suspension of ADA-related modifications or accommodations shall last no longer than is absolutely necessary and will be lifted as soon as practicable. The suspension will be thoroughly documented with an explanation as to reason and duration and forwarded to the ADA Director.

V Related Directives:

- DOC policy 1.1.A.2 -- [Policy and Operational Memorandum Management](#)
- DOC policy 1.1.C.10 -- [Staff Anti-Harassment and Discrimination Policy](#)
- DOC policy 1.3.E.2 -- [Administrative Remedy for Inmates](#)
- DOC policy 1.4.A.2 -- [Inmate Admission](#)
- DOC policy 1.4.E.10 -- [Medical Co-Payment Fees](#)

VI Revision Log:

December 2017: New Policy

<i>Denny Kaemingk (original signature on file)</i>	<i>02/21/2018</i>
Denny Kaemingk, Secretary of Corrections	Date

Attachment 1: Inmate Request for Reasonable Accommodation

The *Inmate Request for Reasonable Accommodation* form is located on the state's WAN.

A copy may be printed using *Microsoft Word 97* as follows:

1. Click [here](#) to access the *Inmate Request for Reasonable Accommodation* by:
 - a. Placing mouse on the word "here" above
 - b. Press and hold the "Ctrl" key on the keyboard
 - c. Click the left button of mouse.

2. Or Select **File/New** from the Menu Bar / Select the **DOC** tab / Select ***Inmate Request for Reasonable Accommodation***

The gray areas indicate the information that is to be entered.

SOUTH DAKOTA DEPARTMENT OF CORRECTIONS Inmate Request for Reasonable Accommodation		
I. REQUEST		
Name:	Number:	Facility:
Describe your disability: _____		
How does this disability limit your daily activities? _____		
What accommodation(s) are you requesting? _____		
I expressly agree to cooperate in the handling of my request, including but not limited to, agreeing to be interviewed by medical/mental health staff, as well as agreeing to any testing as deemed necessary by medical/mental health staff.		
_____ Inmate Printed Name	_____ Inmate Signature and Date	
Received by:		
_____ Employee Printed Name	_____ Employee Signature and Date	
II. RESPONSE <i>Receiving Staff forward this form to Facility ADA Coordinator</i>		
Was medical/mental health staff consulted: <input type="checkbox"/> Yes <input type="checkbox"/> No		
The accommodation request is: <input type="checkbox"/> Approved as Requested <input type="checkbox"/> Modified (state reason why below) <input type="checkbox"/> Denied (state reason why below)		
Basis for decision: _____		
Facility ADA Coordinator Signature: _____ Date: _____		
Return completed form to inmate. Any request that is not approved may be appealed to the ADA Coordinator in accordance with the terms set forth in the Administrative Remedy Policy.		