

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

### I Policy Index:



**Date Signed:** 01/28/2020  
**Distribution:** Public  
**Replaces Policy:** 02/21/2018  
**Supersedes Policy Dated:** None  
**Affected Units:** All Units  
**Effective Date:** 01/28/2020  
**Scheduled Revision Date:** June 2020  
**Revision Number:** 1  
**Office of Primary Responsibility:** DOC Administration

### II Policy:

The Department of Corrections (DOC) shall provide a mechanism to process requests for reasonable modifications of department policies, practices and procedures to accommodate physical and mental impairments or limitations of staff, 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 in the provisions of the Americans with Disabilities Act (ADA), ADA Standards for Accessible Design within a correctional setting and applicable policies. The ADA Director is responsible for coordinating efforts and processes within the Department and its facilities to comply with the requirements of ADA, as it relates to a correctional environment.

#### **ADA Facility Coordinator:**

The staff person assigned to facilitate ADA compliance at each DOC facility and investigate disability-related issues and complaints made known by an inmate within the facility. The Coordinator has authority to make recommendations to the Warden and ADA Director and to implement approved corrective action to ensure compliance with ADA.

#### **Admission:**

Any inmate admitted to a DOC owned or operated facility, including parole violators, parole detainees, new court admits, those released to the Community Transition Program (CTP) and inmates from another jurisdiction temporarily housed at a DOC facility (federal holds or detainees). A new admission shall be those who have not been previously admitted to a DOC facility within the previous ninety (90) days.

#### **Americans with Disabilities Act (ADA):**

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

#### **Communication Disability:**

Disability affecting vision, hearing or speech.

**Disability:**

Defined 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 or blind or have low vision that is as effective as communication with those without a disability. The purpose of effective communication is to ensure persons with a 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 inmate 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 contract, licensing or other arrangements with public or private entities, to house or provide services to inmates. The DOC owns and operates the following facilities:

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, conveyances, roads, walks, passageways, parking lots, or other real or personal property included on the site where the building, property, structure (facility) is located. Includes both indoor and outdoor areas where human-constructed improvements, structures, equipment or property is present.

**Informal Resolution:**

Verbal or written contact between an inmate and staff in which the complaint/grievance 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.

**Qualified Interpreter:**

An interpreter who, via Video Remote Interpreting (VRI) services 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 inmate. Includes sign language interpreters, oral transliterators and cued language transliterators.

**Reasonable Modification:**

The DOC shall make reasonable modifications in policies, practices or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless department 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 inmates 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 those with disabilities. In addition, state law and South Dakota Bureau of Human Resources policy prohibits discrimination against employees and others on the basis of race, color, creed, religion, sex, ancestry, disability or national origin. Designated DOC staff will track, investigate and document known complaints of discrimination by inmates.
1. The Secretary of Corrections will designate an ADA Director for the Department of Corrections. Duties of the ADA Director include but are not limited to:
    - a. Regular review and evaluation of current ADA policies, services, practices and effects thereof upon the DOC. Recommendation of any necessary changes to assist and support the DOC's compliance with the ADA standards and regulations (See DOC policy 1.1.A.2 *Policy and Operational Memorandum Management*).
    - b. In consultation with the ADA Facility Coordinator, assist with the development, implementation and updates of unit plans, post orders, directives and facility operational memorandums to ensure compliance with ADA standards.
    - 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 by the DOC. 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 designated 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 new information concerning ADA responsibilities and legal requirements for the protection of those with disabilities.
    - h. Meet with and communicate with ADA Facility Coordinators on a regular basis to discuss and review received ADA complaints, including requests for administrative remedy filed by inmates concerning ADA issues, including the response or resolution provided to the complainant.
    - i. In consultation with the ADA Facility Coordinators, recommend facility structural changes to the respective Warden 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 and 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 ADA issues and compliance at 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 shall have sufficient time and authority to coordinate and implement the department's ADA policy and directives, and to oversee facility compliance with ADA responsibilities. Coordinators shall have authority to investigate and respond to ADA related concerns communicated by any inmate under the direct or indirect authority of the Warden. Coordinators shall report directly to the Warden or designee. The Coordinator's duties include but are not limited to:
- a. Basic knowledge of the ADA as it applies to correctional environments.
  - b. Review existing and proposed facility practices and procedures for compliance with ADA and this policy. Provide recommendations to the ADA Director for potential corrective action as deemed appropriate.
  - c. Document and track all complaints alleging non-compliance with ADA requirements made by inmates; the results of any investigation, response, disposition and remedies provided in response to the complaint.
  - d. Regularly report ADA issues to the ADA Director.
  - e. In consultation with the Warden and ADA Director, coordinate a response to requests for accommodation, including:
    - 1) Requests for outside evaluation of an inmate by qualified expert.
    - 2) Transfer of the inmate to another facility or moves within a facility.
    - 3) Facilitating inmate access to required auxiliary aids, devices and equipment, consistent with the recommendations of a professional evaluation of the disability, recommendation provided by the professional/qualified expert, and after consideration to safety, security and other legitimate penological interests of the DOC.
  - f. Notify unit staff at the facility of any accommodation approved for an inmate and any required modification of unit procedure(s) that may be necessary as a result of implementing the accommodation. When necessary, provide notice to staff of the time frame which the accommodation shall be applied.
  - g. Maintain records of all requests by inmates for auxiliary aids, services or accommodations, including those provided to an inmate without specific request.
  - h. Maintain records regarding the disposition of inmate complaints regarding ADA which are responded to outside of the Administrative Remedy process.
  - i. Ensure approved accommodations follow inmates throughout their incarceration, including during transfer to another unit or facility, without unreasonable disruption, unless the accommodation is terminated by the inmate or just cause.
  - j. Documentation and reporting of the suspension or interruption of approved ADA accommodations that affect an inmate(s), including, but not limited to, the amount of time of the suspension or interruption and reasons.

## 2. Staff Training:

- A. ADA training is mandatory for designated staff assigned to job positions within a DOC facility housing inmates. ADA information and curriculum is included in pre-service staff training and volunteer training program. Training on ADA topics shall be provided every three years, at a minimum. Training goals include providing knowledge, skill and abilities necessary for staff to implement, support and adhere to ADA standards, DOC policy and directives to ensuring the fair treatment of those with disabilities.
1. The training curriculum will be reviewed and approved regularly by the ADA Director, DOC Policy and Compliance Manager and the DOC Training Director. Additions or revisions to ADA training and curriculum will be coordinated with the ADA Director and Training Director.
  2. The ADA Director and Policy Manager may assist the Training Director in organizing ADA training material and identifying appropriate training topics.
  3. ADA training may include a rotation of topics, including but not limited to the following:
    - a. How to effectively communicate with inmate who have communication disabilities.
    - b. How to identify inmates who may have a disability, any required accommodations and the process of notifying the ADA Facility Coordinator and other staff who need to know.
      - 1) Staff and volunteers having contact with an inmate who requires or may require accommodation, must be informed of the need for the approved accommodation, including any aids or services necessary to ensure effective communication with the inmate. An inmate's identity as needing accommodations, aids or services due to a disability will not be treated as confidential medical information.
    - c. Proper implementation and adherence of and to ADA, as it applies to correctional environments.
    - d. Explanation of examples of reasonable accommodations that may be provided to inmates with a disability.
    - e. The safe operation, repair, upkeep and handling of auxiliary aids and proper techniques and procedures for assisting those who utilize such aids.

## 3. Inmate Admission and Assessments:

- A. Staff assigned to the following programs or services will report all inmates identified as having a disability that substantially limit one or more major life activities of the inmate; or an inmate who has a record of having a disability; or an inmate a 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, and through staff observation (assessments or screening) or examination of any documentation or records that accompany the inmate upon admission.
1. Inmate responses will be documented in COMS as a case note.
  2. Inmates identified having 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](#)) 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 screen all new admission inmates for hearing, medical, mobility or visual disabilities and document any identified disability in the inmate's medical record.
1. Inmates may be identified as having a disability any time the inmate's major life activities are substantially limited.
- D. Behavioral Health staff will screen all new admission inmates for mental health disabilities and document any disability in COMS.
1. Inmates may be identified as having a disability any time the inmate's major life activities are substantially limited.
- E. Education/Employment/Vocational staff will document any inmate identified as having a learning or speech and/or language disability.
- F. Institutional staff will notify the Facility ADA Coordinator of any inmate that staff believes may have a disability who is not already identified as having a disability within COMS.
- G. Staff will contact the Facility ADA Coordinator when an inmate requests accommodation, aids or services for their disability (formal or informal requests). The Coordinator will review the request within five (5) business days of receipt. The Coordinator will consult with Health Services, Behavioral Health and/or education staff, as appropriate, to determine if records, evaluations, assessments or other documentation or evidence exists to support the inmate has a disability and whether the inmate requires accommodation, including verifying any accommodation that was provided to the inmate in the past.
1. Staff will request the inmate sign a release of information (ROI) when requesting outside records that may exist regarding the inmate's disability and past accommodations provided to the inmate. If the inmate refuses to sign a ROI, the request for accommodation or verification of the inmate's disability will be considered based on available information.
  2. The inmate may be referred to a provider or qualified expert for evaluation, screening, testing or assessment if deemed necessary by the ADA Director and doing so 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 the accommodation may have on security, safety or other legitimate penological interests of the DOC and whether granting the accommodation may fundamentally alter the nature of services, programs or activities at the facility, or result in undue financial or administrative burden to the DOC.
    - a. The Coordinator shall consult with security staff regarding potential impacts an accommodation may have on security or safety issues.
    - b. Any change made to a recommendation or decision to provide accommodation to an inmate with a disability as a result of a security or safety concern will be forwarded to the ADA Director.
  4. Accommodations that may be granted 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 in consultation with the Facility ADA Facility 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, or the inmate terminates the accommodation. Reasons an accommodation is terminated must be documented in in COMS and should be forwarded to the Coordinator.
1. Documentation of the initial determination of a disability and any approved accommodations issued will be maintained in COMS under Case management (restrictions) Medical Equipment permitted/medical restrictions.
  2. Each request for accommodation will be considered on a case-by-case basis.
  3. If an inmate's request for accommodation is limited, modified, terminated 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](#)) or by contacting the ADA Director.

#### 4. Effective Communication:

- A. The DOC will take appropriate steps to ensure communications with inmates with a communication disability are as effective as communications with other inmates (§35.160)
- B. All facilities must have appropriate auxiliary aids and services available to afford an inmate with a communication disability equal opportunity to participate in and enjoy the benefits of services, programs or activities offered to inmates without a communication disability (§35.160). Such aids and services will help facilitate effective communication.
- C. Inmates with a communication disability will have equal access to common areas of the facility accessible to inmates without a communication disability.
- D. In determining what type of auxiliary aid, service or accommodation is necessary to accommodate the communication needs of an inmate who is deaf, has significant hearing loss, is blind-deaf or has a speech disability, the DOC will give primary consideration to the inmate's request (§35.160). Each request received, or need identified, will be considered on a case-by-case basis. While not intended to be an exhaustive list, the following accommodations may be provided to inmates with a communication disability:
  1. Qualified interpreters will be available on-site or via video remote interpreting (VRI) service.
    - a. Qualified interpreters or services 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.
  2. Availability of Text Telephone/Teletype Terminal Teletypewriter (TTY).
  3. A telephone with volume control will be available on each housing unit where an inmate with a hearing or speech disability resides.
  4. Videophones and services.
  5. Telecommunications Relay Service (TRS).
  6. South Dakota Relay or interpretive services offered through Video Relay Services (available on the inmate tablets).
  7. Captioned telephone or computer.

8. 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.
  9. Access to legal assistance (inmate typist, legal staff) (See DOC policy 1.3.E.1 [Inmate Access to the Courts](#)).
- 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 security of the facility or risk of harm to the inmate, staff or others, those services and resources readily available at that time will be used by staff to communicate with the inmate.
  2. The DOC will maintain a contract with one or more approved interpreter service agencies, including on-site interpreters and VRI, as necessary. This may include hiring individual interpreters on a fee-for-service basis. Documentation shall be retained by the ADA Director and/or Facility ADA Facility Coordinator for all active interpreter services.
- F. The ADA Facility Coordinator will document all oral and written inmate requests for interpreters or interpreter services, including the action taken in response to the request.
- G. Inmates who are blind or have low vision will be provided appropriate auxiliary aids and services upon request, to include but not limited to the following. This is not intended to be an exhaustive list. Each request will be considered on a case-by-case basis.
1. Information in large print.
  2. Braille.
  3. Electronic enhancement of printed material 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 by the inmate in the past, with consideration given to the accommodation requested by the inmate.
- I. An inmate's choice of communication will be accommodated, unless it can be demonstrated that another similarly effective means of communication is available, or the accommodation requested by the inmate could result in a fundamental alteration of the service or activity, or impose an undue burden (significant difficulty or expense) upon the DOC.
1. If the Facility ADA Facility Coordinator determines a requested accommodation fundamentally alters services or activities or creates an undue burden, he/she will notify the ADA Director. If the ADA Director concurs with the finding, this will be sent to the Warden and Director of Prison Operations.

2. Upon an affirmative finding that a requested accommodation cannot be approved, the DOC has an obligation to provide an alternative aid or service. The ADA Facility Coordinator and ADA Director will identify an alternative and effective accommodation.
- J. Inmates requesting a different method of communication/accommodation than that which was approved, may submit their request to the ADA Facility Coordinator by completing the *Inmate Request for Reasonable Accommodation* (See [Attachment 1](#)).
- K. While not intended to be an exhaustive list, the DOC will work to offer appropriate auxiliary aids, services and accommodations to inmates with a communication disability who request the aid, service or accommodation for the following:
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, medical, dental, visual, or behavioral health examinations, screenings, assessments or treatment, including and drug and alcohol programming;
  6. Counseling or psychological/behavioral health services;
  7. Educational and vocational programming;
  8. Work Release programs and programs where Earned Discharge Credit (EDC) is offered;
  9. Due process hearings, including disciplinary hearings, and hearings which the inmate is a witness;
  10. Grievance interviews;
  11. Religious services;
  12. Criminal investigations; and
  13. Pre-release instructions
- L. Visual alerts or other suitable notification systems must be provided within the room/cell of those inmates who are deaf or hard of hearing to ensure the inmate does not miss announcements, fire alarms, meal times, recreation, education, work assignments or other auditory information provided to inmates who are not deaf or hard of hearing.
- M. Staff will ensure inmates who are deaf or hard of hearing are cuffed for transport/escort are 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 and this has been approved by the Senior Security staff person.
- N. 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.
- O. Health Services will ensure inmates who require hearing aids or cochlear processors have access to such equipment and devices, as determined necessary by an audiologist or qualified medical provider. Replacement batteries for such equipment and devices will be provided at no cost to the inmate (See DOC policy 1.4.E.10 [Medical Co-Payment Fees](#)). Batteries will be available within 24 hours of the inmate's need for replacement batteries, including weekends and holidays.
- P. 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 should 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 and retained.

3. The inmate's needs for effective communication will be met and accommodated while the device is unavailable to the inmate.
- Q. If an inmate with a communication disability is determined by Health Services staff to have a medical condition or need that requires immediate action, and a qualified interpreter or service is not available, 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 communicating with the inmate available 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.
- R. The ADA Facility Coordinator will assess the effectiveness and availability of aids, services and accommodations offered to individual inmates with a communication disability a minimum of every six (6) months, starting with the date the accommodation is first provided. The Coordinator will communicate directly with the inmate to verify the effectiveness of the aid, service or accommodation and note any additional accommodation needs shared by the inmate. Assessment of the aid, service or accommodation will continue until terminated, or the inmate is transferred or discharged. The results, findings and other pertinent information will be documented in COMS as a case note.

## 6. Inmate Request for Accommodation:

- A. Inmates requesting accommodation must complete an *Inmate Request for Reasonable Accommodation* form (See [Attachment 1](#)) and turn this into unit staff or the ADA Facility Coordinator or request an administrative remedy through the approved process. One additional page may be attached to the form if additional space is necessary to explain the reason for requesting the accommodation. Any inmate requiring assistance with completing or submitting their request should contact a member of their unit team or the ADA Facility Coordinator.
- B. Unit staff will ensure all requests, including requests for administrative remedy, are sent to the ADA Facility Coordinator. Inmates may submit a request any time they believe their disability requires an accommodation that is not currently offered. \
- C. Inmate requests for accommodations for medical or behavioral health issues should send their request directly to Health Services staff or Behavioral Health staff or route the request through sick call. Health Services or Behavioral Health Services staff forward requests received to the ADA Facility Coordinator to be documented.
- D. Upon receipt of the request, the ADA Facility Coordinator will discuss the request for accommodation with the inmate and designated staff with authority to take action or respond to the request.
- E. The ADA Facility Coordinator may request additional information from the inmate and/or staff to develop and appropriate response to the request.
- F. After compiling the necessary information, the ADA Facility Coordinator will respond in writing to the request within five (5) days. The response may include notifying the inmate of an extension to the response time, based on the complexity of the issue/request. A copy of the response will be sent to the inmate, Warden and ADA Director. A copy of the response will also be documented COMS.
- G. If a request for accommodation is determined to create undue financial or administrative burden or may result in a fundamental alteration of programs or services, the ADA Facility Coordinator, in conjunction with the ADA Director and Warden, will ascertain whether other alternatives exist which may provide accommodation.

1. If the inmate is approved for accommodation, the inmate will be added to the institution's list of inmates with approved accommodations. This list is maintained by the ADA Facility Coordinator. A description of the accommodation will be included in the documentation.
  - a. Documentation will include the staff responsible for ensuring the accommodation is offered to the inmate.
  - b. Reasons for terminating an accommodation must be documented.
2. Accommodations may differ, depending on the abilities of the inmate, severity of the disability, impact on the inmate's major life activities, nature of the program or activity, access issues, and other relevant factors.
3. Inmates may be required to participate in evaluations, assessments or screening to further investigate and determine the extent of their disability and to identify appropriate and reasonable accommodations. If an inmate refuses to participate, staff shall respond to the request based on the information that is available.

## 7. Inmate Appeals:

- A. If an inmate does not agree with the findings or investigation process applied, or the accommodation offered, or the denial of their request, the inmate may request relief through the administrative remedy process (See DOC policy 1.3.E.2 [Administrative Remedy for Inmates](#)).
  1. Inmates with a communication disability may seek assistance documenting their request for remedy from fellow inmates, staff, family members, attorneys or an outside advocate. Requests for assistance may be directed to the ADA Facility Coordinator.
- B. The inmate will submit all necessary documentation that substantiates and supports their request for administrative remedy.
- C. The ADA Director may respond to a request for remedy, or coordinate a response with facility staff, as deemed appropriate. All responses to a request for remedy must be reviewed by the ADA Director.
- D. 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 (See §35.134). Staff shall not coerce, intimidate, threaten or interfere with any inmate who files an ADA complaint or encourages another inmate to file a complaint.

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

- A. Inmates with a disability shall not be excluded from participation in programs or services or denied access to programs, services, benefits and aids provided to inmates without a disability solely on the basis of a disability. This includes but is not limited to work, education, recreation and early release opportunities. Inmates with a disability shall not be denied access to programs or activities offered 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 access to and which are provided to inmates without a disability.

- C. Inmates with disabilities shall be offered equal access to education, vocational opportunities, work release, institutional employment, religious programs and opportunities for early release, whether mandatory or voluntary, as other like inmates without a disability.
- 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 allowing 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 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 housing appropriate to meet the needs of the inmate, and in a manner that ensures the inmate has access to and is offered the elements necessary to afford the inmate safe housing (See §35.130, 35.152). Housing placement shall be made on the basis of criteria that is validated and dynamic and meets the inmate's security and custody level/requirements, as well as any identified medical or behavioral health needs. Housing assignments shall be consistent with the inmate's AIMS code, PREA code, medical restrictions/needs and separation requirements.
  - 1. If an inmate's approved accommodation requires an inmate be assigned to housing that is different than initially determined (transfer of the inmate), the ADA Director will document information detailing the reasons substantiating the justification for the housing change in COMS as a case note.
- B. When determining appropriate housing placement for an inmate, the following will apply:
  - 1. Staff will not place an inmate with a disability in a facility or unit that exceeds the inmate's custody classification solely because there are no accessible cells or beds available in the facility or unit that provide the approved accommodation required by the inmate.
  - 2. Staff will not place inmates with disabilities in designated medical housing, i.e. the infirmary, chronic care unit or secure mental health unit, unless the inmate is actually receiving required or necessary care, treatment, programming or direct supervision in these units and the placement is deemed appropriate and necessary by Health Services or Behavioral Health Services.
  - 3. Staff will not place inmates with disabilities in facilities or units that do not offer similar programs, services or activities to the inmate as the facility where the inmate would ordinarily be housed, absent their accommodation needs.
- C. Inmates with mobility disabilities will be provided appropriate auxiliary aids and services, including but not limited to, access to wheelchairs, manually powered mobility aids, walkers, crutches, canes, braces, shower chairs, or other similar devices designed to allow the inmate to access areas of the facility typically accessible to inmates without a disability (See §35.137).
- D. The Classification and Transfer Manager or designee will ensure information documenting an inmate's need for accommodation is included in any transfer order. Inmates with a disability, who have an

approved accommodation at one facility, may be transferred to another facility provided the receiving facility will provide the approved accommodation to the inmate. All efforts shall be made to provide the accommodation without significant or unreasonable interruption.

## **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 accessible to staff, the public or inmates. 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, changes or rearrangements in structural parts, and changes 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 usability.
  3. Any alteration of a primary function area, defined as any area where inmates carry out one of more major activities, requires that 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 that are not considered primary function areas include entrances, corridors, restrooms and 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 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 not 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 number 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:**

- A. Accommodations offered to inmates with a disability 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).
- B. In an emergency or disruption of normal institutional operation; or furtherance of the legitimate penological interests of the DOC, any provision or section of this policy may be temporarily suspended. Notice of isolated or temporary suspension of specific services, aids or accommodations shall be provided to the ADA Facility Coordinator and ADA Director. Any isolated or temporary suspension of such 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.1 – *Inmate Access to the Courts*
- 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
- December 2019: Language and formatting.

<i>Mike Leidholt (original signature on file)</i>	<i>01/28/2020</i>
Mike Leidholt, Secretary of Corrections	Date

### Attachment 1: Inmate Request for Reasonable Accommodation

The *Inmate Request for Reasonable Accommodation* form is located at:  
<M:\DOC\DOC Policies\Agency\DOC Policies\Attachment Templates\ADA Inmate Request for Reasonable Accommodation.doc>

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

SOUTH DAKOTA DEPARTMENT OF CORRECTIONS Inmate Request for Reasonable Accommodation		
<b>I. REQUEST</b>		
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
<b>II. RESPONSE</b> <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.		