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		ADA POLICY	

This Administrative Regulation is to be made available in law libraries or other inmate resource centers.

- EFFECTIVE: April 14, 1995
- REVISED: December 30, 2004
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- REVISED: December 5, 2014
- REVISED: November 30, 2015
- REVISED: November 30, 2016

SUMMARY of REVISION/REVIEW

Reviewed with major changes throughout. Updated policy statements to include state law. Removed references to non-existent state agency and added the definition of reasonable accommodation

APPROVED:



Scott R. Frakes, Director
Nebraska Department of Correctional Services

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PURPOSE

To provide the Nebraska Department of Correctional Services (NDCS) with policies that support and implement the provisions of the Americans with Disabilities Act as Amended in 2008 (ADA) and the Nebraska Fair Employment Practice Act. To define those policies and establish the process for requesting reasonable accommodations, supervisory responsibilities, investigative procedures, complaint procedures and corrective actions as they apply to employees and applicants.

GENERAL

NDCS subscribes to a policy of non-discrimination toward individuals with disabilities in all elements of the correctional environment.

Additionally, the Department has designated the NDCS ADA Coordinator to assist facility/program efforts to comply with and carry out the responsibilities defined by the Americans with Disabilities Act. The individual in this position will be trained, qualified and educated in the problems and challenges faced by employees with physical and/or mental impairments and all legal requirements for the protection of employees with disabilities.

POLICY STATEMENTS

The following policy statements are incorporated herein:

- I. State of Nebraska non-discrimination policy as stated in the Nebraska Fair Employment Practice Act, Nebraska Revised Statutes § 48-1101.
- II. NDCS and State of Nebraska policies contained in Administrative Regulation 112.07, *Equal Employment Opportunity and Policies Against Workplace Discrimination and Harassment*.

DEFINITIONS

- I. Qualified individual – an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that the individual holds or desires.
- II. Disability – a physical or mental impairment that substantially limits one or more of the major life activities of such an individual.
- III. Reasonable accommodation – a temporary or permanent adaptation to a program, facility or workplace that allows a qualified individual with a disability to participate in the program or service or perform the essential functions of a job. Reasonable accommodations at NDCS can be short-term (six months or less in duration) or long-term (lasting more than six month).
 - A. Short-Term Accommodation:
When a physical or mental impairment is anticipated to be resolved in six months or less, a short-term accommodation may be granted to enable an employee to fulfill the essential functions of their regular position and/or to complete pre-service or in-service training (see Administrative Regulations 114.04, *Pre-Service Training* and 114.05, *In-Service Training*).

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B. Long-Term Accommodation:

When a physical or mental impairment is estimated by healthcare professionals to continue for more than six months, or the impairment is obvious, a long-term accommodation may be granted to enable an employee to fulfill the essential functions of their regular position and/or to complete pre-service or in-service training (see Administrative Regulations 114.04, *Pre-Service Training* and 114.05, *In-Service Training*). Long-term accommodations will be reviewed by the NDCS ADA Coordinator at least every three years to include receiving updated information from healthcare providers.

IV. Essential Functions - the fundamental, crucial job duties performed in a position. They do not include marginal functions, which are extra or incidental duties.

A function may be essential because: (a) the position exists to perform that function, (b) there are a limited number of employees available who could perform that function, or (c) the function is highly specialized, and the incumbent is hired for special expertise or ability to perform it.

V. Temporary Duty Assignment – a temporary work assignment that allows employees a progressive return to full duty when a physical or mental condition prevents them from fulfilling the essential functions of their regularly assigned post. Temporary duty assignments are not accommodations under the ADA and are assigned based upon the facility’s need and the employee’s skills and abilities. Temporary Duty Assignments are explained in detail in AR 112.28, *Return to Work Policy*.

PROCEDURE

I. ADA COORDINATOR

The Director will assign an ADA Coordinator who shall be responsible for reviewing all requests for workplace modifications, including ADA accommodation requests. Specific duties include:

- A. Review of medical documentation associated with all requests for modifications, accommodations, and temporary duties to determine adequacy of documentation;
- B. Work with HR and medical providers to obtain adequate medical documentation;
- C. Refer requests for modifications and temporary duty to institutional staff once medical documentation is sufficient;
- D. Work with applicants and employees to identify and implement reasonable accommodations under the Americans with Disabilities Act;
- E. Maintain NDCS records on all ADA related matters;
- F. Work with HR to monitor temporary duty rosters and find solutions for moving employees off of temporary duty.

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II. REASONABLE ACCOMMODATIONS

- A. Any applicant or employee may request information or make a request for an accommodation under the ADA by contacting the NDCS ADA Coordinator. Any NDCS employee who receives a request for an accommodation from another employee will refer the request to the NDCS ADA Coordinator.
- B. Employees must request information or an accommodation in writing or by email. If an employee makes a request verbally, the ADA Coordinator will ensure the request is written down or typed and included in the employee's separate ADA folder.
- C. A written request for accommodation is the first step in an interactive process between the applicant or employee and the ADA Coordinator to clarify the individual's request and to identify whether an accommodation is appropriate and reasonable. If an accommodation is not appropriate and/or reasonable, the ADA Coordinator will advise the applicant or employee of available alternatives.
- D. When the impairment is not obvious, medical documentation of the impairment will be requested. Reasonable documentation is information necessary to establish that an individual has a disability that is an ADA-qualified disability and that the disability necessitates an accommodation. If the individual refuses to provide reasonable documentation and the basis for the request is not obvious, their request will be denied.
 1. It is the applicant/employee's responsibility to provide the needed medical documentation. Any applicant/employee seeking a reasonable accommodation must have their healthcare provider complete and sign the Medical Status Supplement (refer to AR 112.28 Attachment D). NDCS will accept healthcare provider's statements written on letterhead that contain diagnosis, prognosis, duration of condition and any recommended accommodation, in lieu of the form. The name and signature of the healthcare provider must be included on all documentation. Any documentation not meeting the minimum requirements can be returned to the healthcare provider for clarification.
 2. The individual may be asked to sign a release of information allowing the healthcare provider to respond to NDCS (refer to AR 112.28 Attachment C).
- E. Upon receipt of the necessary documentation the individual and the ADA Coordinator will discuss, in person or by phone/email, to determine what accommodation(s) would be most effective and reasonable. Final determination of an accommodation and/or its reasonableness is made by NDCS.
- F. All documentation received throughout the process of making an ADA determination will be maintained in a separate ADA file. If an employee is involved, this information will not become a part of their personnel file. Only personnel involved in making the reasonable accommodation and/or assisting in the implementation of the accommodation will have knowledge of the request. Information will be provided only on a need-to-know basis.

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III. DISABILITY-RELATED COMPLAINTS OR GRIEVANCES

- A. When an employee, inmate, visitor, or other recipient of services provided by NDCS believes that he/she has been subjected to disability discrimination, they shall have the right to report such to NDCS for prompt investigation and appropriate actions. Inmates should follow grievance procedures for reporting. (AR 217.02, *Inmate Grievance Procedures*).
- B. In submitting a disability or inaccessibility complaint or grievance, care should be taken to state specific facts including: person or persons involved, structure/barrier involved, the date, time and place of occurrence, what was done or said, and the names of any witness(es) present.
- C. Any person who is uncertain how to submit complaints of disability discrimination may contact the NDCS ADA Coordinator, the State ADA Coordinator, or the Nebraska Equal Opportunity Commission for assistance in filing such complaints.
- D. Persons who wish to submit complaints to NDCS for disability accommodation or disability discrimination also have the right, at any time, to file such with the Nebraska Equal Opportunity Commission (NEOC) and/or the Federal Equal Employment Opportunity Commission (EEOC). No one is required to submit a complaint to NDCS before filing with the NEOC and/or EEOC.

IV. NDCS RESPONSE AND INVESTIGATIVE PROCEDURES

It is essential that all NDCS employees take seriously all requests for disability accommodation, and complaints or grievances involving disability discrimination or accessibility. NDCS shall act promptly to investigate and resolve all such requests, complaints and grievances in accordance with the following procedures:

- A. In the event a, complaints or grievance involving disability-related accommodation, accessibility or discrimination is received by any NDCS employee, they shall immediately inform the NDCS ADA Coordinator. The ADA Coordinator will inform the appropriate supervisor (Warden/Program Administrator, Department Head or Section Head) of the complaint.
- B. The NDCS ADA Coordinator shall request an individual be appointed to investigate the, complaint or grievance.
- C. The appointed investigator shall meet with the individual initiating the complaint. During this initial contact, the investigator shall apprise the individual of the NDCS ADA policy and of the steps he/she could take to initiate further actions to resolve the situation, if not satisfied with the initial findings and proposed actions.
- D. The investigation should be completed as soon as practical, normally within 120 days. When extenuating circumstances require more than 120 days the initiator or complainant will be informed in writing.
- E. Prior to concluding the investigation, the investigator shall consult with the Director or designee concerning the progress of the investigation. The investigator will prepare

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and submit a written report of the investigation, stating the findings and recommendations for the Director.

- F. Upon completion of any necessary follow-up, the Director or designee shall render a final decision regarding the complaint or grievance.
 - G. Documentation pertaining to the complaint or grievance and the investigation, including the investigator's report, will be maintained by NDCS in a separate investigative file. All medical information will be kept confidential.
- V. **CORRECTIVE ACTIONS**

If the Director agrees with the conclusions and recommendations of the investigator, appropriate corrective actions will be taken. The corrective actions will primarily be directed toward correcting the situation and making appropriate changes to prevent recurrence. If the initiator or complainant requests a statement of the findings of the investigation and the corrective actions taken, it shall be provided to them.

REFERENCE

- I. **ADMINISTRATIVE REGULATIONS**
 - A. AR 112.07, *Equal Employment Opportunity and Policies Against Workplace Discrimination and Harassment*
 - B. AR 112.28, *Return to Work Policy*
 - C. AR 114.04, *Pre-Service Training*
 - D. AR 114.05, *In-Service Training*
 - E. AR 217.02, *Inmate Grievance Procedures*
- II. **STATE AND FEDERAL LAWS**
 - A. Americans with Disabilities Act – of 1990 (Pub. L. 101-336) and the ADA Amendments Act of 2008 (Pub. L. 110-325).
 - B. Nebraska Fair Employment Practice Act, Neb. Rev. Stats. §§ 48-1101 to 48-1125.
- III. **AMERICAN CORRECTIONAL ASSOCIATION (ACA) STANDARDS**
 - A. Standards for Adult Correctional Institutions (ACI) (4th Edition): 4-4054, 4-4429-1
 - B. Performance Based Standards for Adult Correctional Residential Services (ACRS) (4th Edition): 4-6A-01-1