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		ADA POLICY – INMATES & THE PUBLIC	

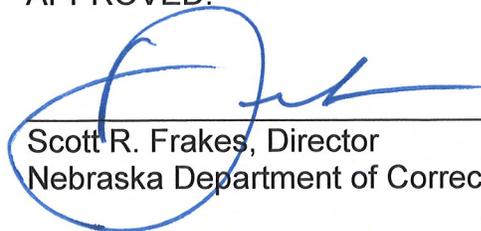
This Administrative Regulation is to be made available in law libraries or other inmate resource centers.

EFFECTIVE: December 5, 2014
 REVISED: November 30, 2015
 REVISED: November 30, 2016

SUMMARY of REVISION/REVIEW

Minor revisions for grammar and clarity.

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 implementing the provisions of the Americans with Disabilities Act (ADA). To define those policies in terms of supervisory responsibilities, investigative procedures, complaint and grievance procedures, and corrective actions as they apply to inmates and the public.

GENERAL

The Department will,

- A. As a public entity:
 - 1. Provide authorized visitors access to all public areas, services and programs.
 - 2. Provide inmates access to required or approved activities, services and programs for which they are qualified.
- B. NDCS subscribes to a policy of non-discrimination toward individuals with disabilities in all elements of the correctional environment. This policy includes strict prohibitions against actions by individuals that create an intimidating or offensive environment through any verbal or physical conduct of a discriminatory nature.
- C. 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 offenders with physical and/or mental impairments. This includes knowledge of programs designed to educate and assist disabled offenders, and all legal requirements for the protection of offenders with disabilities.

PROCEDURE

I. QUALIFIED INDIVIDUAL/REASONABLE ACCOMMODATIONS

Discrimination on the basis of disability against qualified individuals with disabilities is prohibited. A qualified individual is an individual with a physical or mental impairment which substantially limits his or her ability to perform a major life activity and who can meet the essential eligibility requirements of the program, service or activity with or without reasonable accommodations.

Examples of reasonable accommodations include providing special equipment such as readers, sound amplification devices or Braille materials; providing inmate or staff assistance; sign language interpreters, or modifying work or program schedules.

- A. NDCS will make a reasonable accommodation to the known physical or mental limitations of an otherwise qualified inmate or visitor with a disability unless to do so would be unduly costly, extensive, substantial, or that would fundamentally alter NDCS' inherent nature of business.

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- B. Any inmate or member of the general public may request information or make a request for an accommodation under the ADA by contacting the NDCS ADA Coordinator, or any NDCS employee, who will receive the request and refer the individual to the NDCS ADA Coordinator. A request for an accommodation must be done in writing or by email.
- C. A request for accommodation is the first step in an interactive process between the individual and the ADA Coordinator/designee to clarify the individual's request and to identify the appropriate reasonable accommodation. When the disability is not obvious, reasonable documentation of the disability will be requested. In the case of inmates, the ADA Coordinator may request medical documentation directly from Health Services. 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, their request cannot be processed and a determination under ADA cannot be assessed.
- D. Upon receipt of the necessary documentation, the individual and the ADA Coordinator/designee will communicate to determine what accommodation(s) would be most effective and reasonable. Reasonable accommodations may include modifications or adjustments that enable individuals to enjoy benefits and privileges equal to those provided to individuals without disabilities. Final determination of an accommodation and/or its reasonableness is made by NDCS.
- E. All information acquired throughout the process of making an ADA determination will be maintained in a separate ADA 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.

II. REPORTING ADA-RELATED COMPLAINTS OR GRIEVANCES

A. Inmates

1. When an inmate believes that he/she has been subject to disability discrimination or denied accessibility to an activity, service, or program, they shall have the right to report such to NDCS for prompt investigation and appropriate actions.
2. Inmates may follow grievance procedures for reporting ADA-related concerns (Administrative Regulation 217.02, *Inmate Grievance Procedures*). Any NDCS employee who receives an inmate grievance that references an ADA issue or lack of accessibility to activities, services and programs shall immediately inform the NDCS ADA Coordinator. The written response to the inmate grievance shall indicate that the grievance has been forwarded to the NDCS ADA Coordinator for investigation.
3. Inmates may also contact the NDCS ADA Coordinator directly to report an ADA-related concern. If not already provided, the NDCS ADA Coordinator will request a written statement outlining the circumstances contributing to the complaint.

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B. Visitors

1. When a visitor or other recipient of services provided by NDCS believes that he/she has been subject to disability discrimination, they shall have the right to report such to NDCS for prompt investigation and appropriate actions.
2. Visitors should contact the NDCS ADA Coordinator to report an ADA-related complaint. If not already provided, the ADA Coordinator will request a written statement outlining the circumstances contributing to the complaint. Any NDCS employee who receives a complaint from a visitor shall forward the complaint and the visitor's contact information to the ADA Coordinator.

C. In submitting an ADA-related complaint or grievance, care should be taken to state specific facts including: Person or persons involved, the activity, service or program to which access was denied, the date, time and place of occurrence, what was done or said and the names of any witness(es) present.

D. Any person who is uncertain how to report complaints of disability discrimination may contact the NDCS ADA Coordinator, the State ADA Coordinator, or the Nebraska Equal Opportunity Commission for assistance in reporting such complaints. It is neither necessary nor required that an individual file a report with the Department before filing with an outside entity.

III. DEPARTMENT RESPONSE AND INVESTIGATIVE PROCEDURES

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

- A. In the event a complaint 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) of the complaint.
- B. The NDCS ADA Coordinator shall request an individual be appointed to investigate the request, complaint, or grievance.
- C. The appointed investigator shall contact the individual initiating the complaint or grievance. 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 he/she is 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 by the investigator.
- 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 and submit a written report of the investigation, stating the findings and recommendations for the Director.

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- F. Upon completion of any necessary follow-up, the Director or designee shall render a final decision regarding the grievance or complaint.
- G. The investigator will inform the NDCS ADA Coordinator when the investigation has concluded. The investigator will not disclose the outcome of the investigation.
- H. Documentation pertaining to the grievance or complaint and the investigation, including the investigating officer's report, will be maintained by NDCS in a separate investigative file. All medical information will be kept confidential.

IV. 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.

V. ADA and Inmate Health Services

- A. This ADA policy addresses access issues due to a known disability. The accommodations process should not be used to gain access to medical care. Requests for medical care should be directed to Health Services. If the ADA Coordinator receives a request for medical services, it will be forwarded to Health Services for resolution.
- B. Health care appliances will be prescribed and approved by Health Services. Health care appliances include, but are not limited to, orthopedic prostheses, orthopedic braces or shoes, crutches, canes, walkers, wheelchairs, hearing aids, prescription eyeglasses, artificial eyes, dental prostheses, breathing devices and gloves for wheelchair use only. Health care appliances shall be approved subject to medical necessity, safety and security.
- C. The ADA Coordinator will work with Health Services to assess if a medical pass is needed to address an inmate access issue.

REFERENCE

I. ADMINISTRATIVE REGULATIONS

- A. Administrative Regulation 112.07, *Equal Employment Opportunities and Policies Against Work Place Discrimination and Harassment*
- B. Administrative Regulation 217.02, *Inmate Grievance Procedures*

II. ATTACHMENTS

- A. Americans with Disabilities Act – State of Nebraska Policy

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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