

 Good Life. Great Mission. <hr/> DEPT OF CORRECTIONAL SERVICES	POLICY		
	ADA POLICY		
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STATEMENT OF AVAILABILITY *This Policy is to be made available in law libraries or other inmate resource centers.			

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SUMMARY of REVISION/REVIEW

Policy Directive 019-023 incorporated. III.A – Language added. Reformatted to Match Policy 001.01.
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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 (ADA) as Amended in 2008 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, applicants, inmates, and the public. (4-4054)

GENERAL

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.

As an employer, NDCS will provide qualified individuals with reasonable accommodations during the pre-employment process and after hire that do not pose a threat to the security of its facilities or create an undue hardship for the agency. As a public entity, NDCS will provide reasonable accommodations to all authorized visitors in order to access all approved areas, services/programs, and will provide inmates access to required or approved activities, services, and programs for which they are qualified. (4-4054)

NDCS has a designated Agency ADA Coordinator accessible to staff, inmates, and the public, who is qualified and educated in the problems and challenges faced by people with disabilities. The Agency ADA Coordinator will assist facility/program efforts in complying with and carrying out the legal requirements/responsibilities as defined by the Americans with Disabilities Act.

This policy incorporates the State of Nebraska non-discrimination policy as stated in the Nebraska Fair Employment Practice Act, Nebraska Revised Statutes § 48-1101 and the NDCS/State of Nebraska policies contained in *Policy 112.07, Equal Employment Opportunity and Policies Against Workplace Discrimination and Harassment*. (4-4429)

DEFINITIONS

- I. **QUALIFIED EMPLOYEE OR APPLICANT** - 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. **QUALIFIED INMATE OR PUBLIC** - A person 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.
- III. **DISABILITY** - A physical or mental impairment that substantially limits one or more major life activities of such an individual.
- IV. **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 months). 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.

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- V. 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.
- VI. 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. Long-term accommodations will be reviewed by the NDCS ADA Coordinator at least every three years to include receiving updated information from healthcare providers.
- VII. 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.
- VIII. 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 agency's need and the employee's skills and abilities. Temporary Duty Assignments are explained in detail in Policy 112.28, *Return to Work Policy*.

PROCEDURE

I. ADA COORDINATOR

The NDCS ADA Coordinator 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 healthcare 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, employees, inmates, and the public to identify, implement and monitor reasonable accommodations under the Americans with Disabilities Act.
- E. Maintain NDCS records on all ADA-related matters.
- F. Work with Human Resources to monitor temporary duty rosters and find solutions for moving employees off temporary duty.

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II. EMPLOYEES AND APPLICANTS (4-4054)

- 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 Workability Form-(refer to Policy 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 Policy 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.

III. INMATES AND THE PUBLIC

- A. Inmates with disabilities will be housed in a manner to provide for their safety and security while providing for integration with other inmates and allowing access to programs and

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services within the facility. NDCS will ensure inmates with disabilities have any necessary equipment to perform self-care and personal hygiene in a reasonably private environment. The assignment of appropriately trained and qualified individuals to assist disabled inmates who cannot perform basic life functions will be provided as appropriate, including programs designed to educate and assist disabled offenders. (4-4429-1)

- 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 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.

IV. SERVICE DOG

NDCS shall permit the use of a service dog by an individual with a disability.

- A. If it is not readily apparent that the service dog is trained to do work or perform tasks for an individual with a disability (e.g., the dog is observed guiding an individual who is blind or has low vision, pulling a person's wheelchair, or providing assistance with stability or balance to an individual with an observable mobility disability), NDCS may ask the individual if the service dog is required because of a disability and what work/task the animal has been trained to perform. NDCS shall not require documentation that the service dog has been certified, trained or licensed as a service animal.
- B. At the discretion of the Warden, the handler may be asked to remove the service dog only if the service dog is out of control and the dog's handler does not take effective action to control it or it becomes obvious that the service dog is not housebroken. In such situations, it is up to the handler to determine if he/she will remain at the facility without the service dog.

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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, 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.

VI. DISABILITY-RELATED COMPLAINTS OR GRIEVANCES

A. Applicants, Employees, Visitors, and the Public

When an applicant, employee, 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.

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.

B. 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; see Policy 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.

C. 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.

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- D. 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.

Inmates should follow grievance procedures for reporting found in Policy 217.02, *Inmate Grievance Procedures*.

VII. 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 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, 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 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.

VIII. 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.

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REFERENCE

I. STATUTORY REFERENCE

- 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.

II. POLICIES

- A. Policy 112.07, *Equal Employment Opportunity and Policies Against Workplace Discrimination and Harassment*
- B. Policy 112.28, *Return to Work Policy*
- C. Policy 217.02, *Inmate Grievance Procedures*

III. ATTACHMENTS – None noted

IV. AMERICAN CORRECTIONAL ASSOCIATION (ACA) STANDARDS

- A. Standards for Adult Correctional Institutions (ACI) (4th Edition): 4-4054, 4-4429, 4-4429-1
- C. Performance Based Standards for Adult Correctional Residential Services (ACRS) (4th Edition): 4-ACRS-6A-01-1, 4-ACRS-6A-04, 4-ACRS-6A-04-1, 4-ACRS-6A-04-2, 4-ACRS-7E-02, 4-ACRS-7E-03