



THE CITY OF NEW YORK
DEPARTMENT OF CORRECTION



DIRECTIVE

☒ NEW ☐ INTERIM ☐ REVISED			SUBJECT		
EFFECTIVE DATE 12/15/05		*TERMINATION DATE / /		REASONABLE ACCOMMODATION FOR INMATES WITH DISABILITIES	
CLASSIFICATION # 3802	SUPERSEDES	DATED	APPROVED FOR WEB POSTING ☒ YES ☐ NO	DISTRIBUTION B	PAGE 1 OF 13 PAGES
RECOMMENDED FOR APPROVAL BY REVIEW BOARD MEMBER			AUTHORIZED BY THE COMMISSIONER		
ROBERT N. DAVOREN, CHIEF OF DEPARTMENT SIGNATURE			MARTIN F. HORN SIGNATURE		

I. PURPOSE

Title II (Subtitle A) of the Americans with Disabilities Act (ADA) prohibits public entities, including the New York City Department of Correction, from discriminating against any qualified individual with a disability in their facilities, programs, services or activities. This directive delineates the Department's policies and procedures to ensure that the Department complies fully with Title II of the ADA by ensuring that qualified inmates are not subject to unlawful discrimination on the basis of a disability. This directive also sets forth guidelines for the identification of disabled inmates in the Department's custody, the role of the Department's Disability Rights Coordinator for Inmates (DRCI) and the Department's commitment to complying with the ADA. This directive applies solely to inmates in Department facilities.

II. POLICY

- A. Some inmates with disabilities may need a reasonable accommodation to access Department facilities, programs, services or activities. The Department will make reasonable accommodations or modifications to existing policies and procedures, consistent with legitimate penological interests, in order to allow qualified inmates with disabilities the same access to programs and facilities as non-disabled inmates, unless doing so would be an undue burden to the Department, cause a fundamental alteration to a program, or pose a direct threat of substantial harm to the health and safety of the individual or others. The Department will ensure that procedures are in place for inmates with disabilities to request reasonable accommodations and to formally complain about unlawful treatment regarding Title II of the ADA.

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II. POLICY (cont.)

- B. It is the policy of the Department to comply with Title II of the ADA and accordingly to provide inmates with disabilities access to Department programs and services in accordance with the law. To this end, the Department will establish policies and procedures for the screening and classification of inmates with disabilities for the following purposes: 1) to ensure that this information is conveyed to the DRCI; 2) to permit inmates with or claiming a disability to request a reasonable accommodation 3) to inform and advise inmates of the Department's commitment to comply with the ADA; and 4) to ensure that all medical information obtained from the inmate be kept confidential, separate from other prisoner information, and is disseminated only on a need-to-know basis.
- C. Upon entry of new inmates into the custody of the Department, the Deputy Warden for Programs, or the Commanding Officer at a facility where the position of Deputy Warden for Programs does not exist, or his/her designee, is to ensure that, when a person with or claiming a disability is received into custody, the following takes place. That the Disability Rights Coordinator for Inmates (DRCI) is advised within 24 hours (or, if intake occurs over the weekend or on a public holiday, by the next business day) of the inmate's name, NYSID number, Book & Case number, the nature of the disability, and any request for accommodation made by that inmate upon intake.

III. DEFINITIONS

- A. Disability (as defined in 42 USC § 12102(2); 28 CFR § 35.104)

The term "disability" means:

1. A physical or mental impairment¹, (as defined in 28 CFR § 35.104), that substantially limits one or more of an individual's major life activities; or
2. A record of such an impairment; or
3. Perceived as having such impairment.

¹ "The phrase 'physical or mental impairment' includes . . . such contagious and non-contagious diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism" 28 CFR § 35.104

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III. DEFINITIONS (cont.)

B. Major Life Activities (as defined in 28 CFR § 35.104)

Includes such functions as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

C. Substantial Limitation of a Major Life Activity:

The impairment makes the person unable to perform a major life activity that the average person in the general population can perform.

D. Reasonable Accommodation:

1. Changes to the application process, physical environment, policies or procedures or the manner in which tasks are carried out that enable a qualified inmate with a disability to participate in a program or service or use a facility. Reasonable accommodations might include, but are not limited to, modifying an existing bathroom, classroom, or other program area to be wheelchair accessible by the installation of ramps, and/or handrails; providing interpretive services for hearing impaired inmates, providing mobility escorts (e.g. trained inmate volunteers); providing a reader to an inmate with a visual impairment; modifying existing equipment or devices, such as lowering telephones or raising a typing table in the law library.
2. The Department will make reasonable accommodations or modifications to existing policies and procedures that are consistent with legitimate penological interests in order to allow qualified inmates with disabilities the same opportunity of usability and access to programs and facilities as non-disabled inmates, unless doing so would be an undue burden to the Department, cause a fundamental alteration to a program, or pose a direct threat of substantial harm to the health and safety of the individual or others.

E. Qualified Inmate with a Disability:

An individual with a disability who, with or without a reasonable accommodation, is able to meet the essential eligibility requirements for the receipt of services or the participation in applicable programs or activities. A disability does not exempt an inmate from a requirement that they possess some other qualification in order to be eligible for the program or activity.

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III. DEFINITIONS (cont.)

F. Undue Burden and Fundamental Alteration Defenses:

The Department need not take an action to provide accessibility to a service, facility, program, or activity if it can prove that the action would impose an undue financial or administrative burden on the agency, or would fundamentally alter the nature of the facility, service, program or activity, or would pose a direct threat of substantial harm to the health and safety of the individual or others. The determination that an action would result in an undue burden, fundamental alteration, or pose a direct threat, may be made only by the Commissioner or his/her designee. The decision must be made only after consultation with the Disability Rights Coordinator for Inmates (DRCI) and consideration of all resources available for use in the funding and operation of the facility, service, program, or activity, and must be accompanied by a written statement of reasons for reaching that conclusion. If the requested action would impose an undue burden or fundamentally alter a service, program, or activity, the Department shall, whenever possible, take any other action that would not result in an undue burden or fundamental alteration, but would still ensure that disabled inmates receive the benefits of the facility, service, program, or activity.

G. Department Staff:

Disability Rights Coordinator for Inmates – The Disability Rights Coordinator for Inmates (DRCI) shall have the responsibility and authority to:

- ensure that procedures for the prompt and equitable resolution of ADA complaints by inmates and/or requests by inmates with disabilities for reasonable accommodations are in place, publicized, and implemented;
- process, investigate, and promptly act upon individual complaints and/or requests for reasonable accommodations including oversight of any grievance filed by an individual regarding a denial, or modification of a request for a reasonable accommodation;
- ensure that all Department staff who interact with inmates with disabilities are provided with adequate and appropriate information and training on ADA issues;
- ensure that inmates with disabilities are housed in facilities that accommodate their disabilities and that all Department facilities used for this purpose and are ADA compliant;
- compile and maintain such information concerning inmates with disabilities in the custody of the Department as is necessary to carry out the duties and responsibilities of the position;

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III. DEFINITIONS (cont.)

- develop and maintain an inventory of written materials and other resources concerning ADA compliance; and otherwise coordinate the Department's efforts to comply with and carry out its responsibilities under the ADA with respect to inmates;
- serve as a resource for inmates, other Department employees, and for representatives of federal, state, and city government agencies who have questions regarding Department inmates with disabilities, questions regarding the Department's obligations with respect to inmates with disabilities, and Department procedures concerning ADA compliance.
- keep track of inmates with disabilities throughout their incarceration to ensure that they are not denied access to programs, services or activities offered by the Department because of their disability;
- coordinate placement and action on request for reasonable accommodations regarding inmates with disabilities with appropriate personnel throughout the Department and other agencies.

Deputy Warden of Programs – The Deputy Warden of Programs at each facility where any individual with a disability is housed, through their designee, is to serve as the Disability Rights Contact Person for that facility and shall have the responsibility and authority to:

- serve as a liaison between inmates in the facility and the DRCI, if and when needed, as the inmate may choose to contact the DRCI directly;
- process, investigate, and promptly act upon individual complaints and/or requests for reasonable accommodations at his/her assigned facility in consultation and conjunction with the DRCI.
- serve as an on-site resource for inmates with disabilities, and may address informal requests for reasonable accommodations and informal complaints about non-compliance with the ADA at the facility without consulting with the DRCI.
- notify the DRCI when an inmate requests a reasonable accommodation that cannot be addressed informally at the facility level.
- implement any responsive or remedial action determined appropriate, after consultation with the DRCI.

Associate Counselors – Associate Counselors shall be a liaison between inmates requesting a reasonable accommodation and the DRCI and Deputy Warden for Programs designee at their facilities, as further outlined in Section V.B.3. of this directive.

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IV. GUIDELINES

- A. In accordance with the provisions specified herein, Department staff who become aware of an inmate's disability, or claimed disability, are instructed not to disclose that status to other inmates or staff except as necessary to carry out the Department's policy under this Directive.
- B. Commanding Officers of facilities shall promulgate and effect the distribution of command level orders specifying the provisions contained in this directive.
- C. When processing an inmate who has been identified as an individual with a disability into a Departmental facility, the indication that the inmate is disabled shall be affixed only to the documents specified below:
 1. Medical History Chart and other related documents.
 2. Form #ARC 239M – ARRAIGNMENT AND CLASSIFICATION RISK SCREENING FORM

V. PROCEDURES

A. GENERAL PROCEDURES

1. NOTIFICATION

Posters notifying inmates of the name, address and phone number of the Disability Rights Coordinator for Inmates (DRCI) as well as correction counselors assigned to each facility will be conspicuously posted in applicable areas in all facilities including but not limited to law libraries, school buildings, counselors' offices, reception and intake areas. Additionally, this notification will be published in the inmate's handbook that is provided to each inmate at intake. Appropriate notification methods applicable to illiterate, blind and visually impaired inmates shall also be utilized.

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V. PROCEDURES (cont.)

2. ENSURING EFFECTIVE COMMUNICATION

In order to ensure equally effective communication with staff, inmates, and, where applicable, the public, reasonable accommodation in accordance with this directive shall be afforded inmates with disabilities, e.g., vision, speech, hearing impaired, and learning disabled. Auxiliary aids that are reasonable, effective, and appropriate to the needs of the inmate shall be provided when simple written or oral communication is not effective. Such aids may include interpretive services - including qualified interpreters, readers, sound amplification devices, captioned television/video text displays, Telecommunication Devices for the Deaf (TDD), audiotaped text, Braille materials, large print materials and signage.

B. INTAKE PROCEDURES

1. COURT DETENTION FACILITY

Whenever a disabled inmate is received at a Department court detention facility or is a direct admission to a Department facility, and the inmate's disability is readily apparent or the inmate informs staff that the inmate has a disability, the staff member processing the inmate for admission shall inquire whether the inmate is requesting a reasonable accommodation pursuant to Title II of ADA, and note the inmate's response on the #ARC 239M form. Further, if the response is in the affirmative, the staff member shall notify the DRCI within the time frame set forth in Section II.C.

2. RECEIVING ROOM / INTAKE AREA CAPTAIN

- a. When a disabled inmate is admitted to a Departmental facility, or transferred from one facility to another, the Receiving Room / Intake Area Captain, or his/her designee, shall immediately notify the Associate Counselor located in the Counseling Services Unit at the facility and the Deputy Warden for Programs or his/her designee. The notification to the Associate Counselor shall include the inmate's name, NYSID number, Book & Case number, the nature of the inmate's disability, and any request for accommodation made by that inmate upon intake.

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V. PROCEDURES (cont.)

- b. The Intake Area Captain shall memorialize the date and time of the telephone call, the name of the Associate Counselor contacted and the result of the call, (either speaking with the Associate Counselor or leaving a message) on the #ARC 239M form.
- c. Should disabled inmate(s) be admitted to the facility during hours when the Counseling Services Unit is closed, the Intake Captain shall forward a list on Form 3802D (Notification to Counseling Services Unit) to the Counseling Services Unit and the Deputy Warden for Programs or his/her designee, containing each inmate's name, NYSID number, Book & Case number and housing location. This list must be prepared and forwarded prior to the completion of the Captain's tour of duty.

3. ASSOCIATE COUNSELOR:

- a. Upon being notified by the Receiving Room/Intake Area Captain of the admission of a inmate with a disability, an Associate Counselor shall make arrangements to meet with the inmate as soon as practicable and inform the inmate of all programs and coordinate all services that the inmate may require.
- b. The Associate Counselor at a facility where any inmate with a disability is housed is to serve as the liaison between the inmate and the DRCI and also between the inmate and the Deputy Warden for Programs, or his/her designee, as the Disability Rights Contact Person for that facility.
- c. As soon as practicable after initially meeting with an inmate with a disability, as outlined in Section V.3.a. (above), the Associate Counselor shall contact the DRCI, either by phone or in writing, by email or by memorandum. The communication to the DRCI shall include the name of the facility, the inmate's name, NYSID number, Book & Case number, the nature of the inmate's disability, and any request for accommodation made by that inmate upon intake. If the initial contact to the DRCI regarding an inmate with a disability is made by phone, a written memo that includes the above information shall be sent to the DRCI. Records of all such written communication shall be maintained in the Counseling Services Unit.

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V. PROCEDURES (cont.)

- d. The Associate Counselor shall assist inmates who request a reasonable accommodation in completing the Inmate Reasonable Accommodation Request (IRAR) (form #3802A, attachment A) when requested to do so and whenever assistance is necessary because of the inmate's disability. The Associate Counselor who receives the IRAR form will acknowledge requests by signing and dating the form in the space provided.
- e. The Associate Counselor will then provide a copy of the request to both the DRCI and the facility Deputy Warden for Programs. The DRCI and the Deputy Warden for Programs shall be responsible for acting upon requests for accommodation by consulting with each other and with medical staff, if necessary.

4. DEPARTMENT OF HEALTH & MENTAL HYGIENE (DOHMH) OR ITS MEDICAL PROVIDER:

If DOHMH or its medical provider knows that an inmate with a disability is in the Department's custody, whether notified by the inmate, or as a result of the medical examination provided upon admission to the Department, or anytime thereafter, the examining physician shall facilitate the necessary arrangements to interview and evaluate the inmate. Thereafter, if the inmate agrees and signs the consent form, DOHMH or its medical provider shall provide medical information to the DRCI necessary for the limited purpose of evaluating the inmate's accommodation request and making a determination regarding the requested accommodation. (See Form #3802A, attachment A).

C. REASONABLE ACCOMMODATION PROCESS

An inmate may request an accommodation, or complain about any action that is prohibited by the ADA, at any time during his/her incarceration.

1. Requests for accommodation may be made by completing an Inmate Reasonable Accommodation Request ("IRAR") form (Form #3802A, attachment A) and submitting the form with applicable supporting documentation, if any, to the Associate Counselor and/or the Disability Rights Coordinator for Inmates. IRAR forms may be obtained from housing areas, Counseling Services Unit and Law Libraries and must be readily available.

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V. PROCEDURES (cont.)

2. It is not necessary to complete an IRAR form when the request is an emergency, or is otherwise of a time sensitive nature. Such requests may be made orally, or in writing, without utilizing the IRAR form. For example, an inmate with a disability may require immediate assistance in obtaining medication or using the bathroom. Such a request can be made immediately by verbal or written communication directly to Department staff. Department staff shall, after consulting with their supervisor, respond to reasonable requests for an accommodation that are consistent with legitimate penological interests.
3. An inmate may request assistance from associate counseling staff in completing the IRAR form. Other appropriate Department employees may assist inmates in completing this form when counseling staff is not available. Appropriate staff shall assist disabled inmates in completing the IRAR form whenever assistance is necessary because of the inmate's disability.
4. The Associate Counselor who receives the form will acknowledge requests by signing and dating the form in the space provided. (See, Section V.B.3.d.).
5. The Associate Counselor will then provide a copy of the request to both the DRCI and the facility Deputy Warden for Programs. The Deputy Warden for Programs, through their designee, shall be responsible for responding to the inmate requesting the accommodation and ensuring that the accommodation, if any, is implemented. If the Deputy Warden for Programs cannot implement the requested accommodation, the Deputy Warden for Programs shall contact the DRCI, who will be responsible for ensuring that an accommodation is granted when warranted. Department staff shall consult with each other or with medical staff, as necessary to effectuate the requirements of this Directive. (See Section V.B.3.e.).
6. Absent exceptional circumstances, the Department shall act upon requests for accommodations within FIVE (5) business days of submission to the DRCI by either granting the request, denying it, or granting it with modification. Inmates requesting an accommodation shall be informed in writing of any delay and reason for the delay. If additional information is needed in order to make a determination, the inmate will be notified of this fact in writing, within FIVE (5) business days. (Form 3802B, attached, shall be utilized for these purposes).

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V. PROCEDURES (cont.)

7. In making a decision regarding the requested accommodation, consideration will be given to the choice of accommodation requested. Equally effective access to a facility, program, service, or activity may be afforded through an alternative method that is less costly or intrusive. Such alternative methods shall be utilized to provide reasonable access in lieu of modifications requested by the inmate, so long as they are effective.
8. If a medical examination is necessary to verify the existence of a disability that is not obvious, or to verify the severity of the limitations, the inmate will be asked to provide medical documentation to support his/her request for accommodation. If previous medical documentation exists, subsequent reexamination may not be necessary with every new request for a reasonable accommodation, provided medical staff is satisfied that the medical documentation is genuine after verification. Verification of medical documentation may include contacting the source of the documentation to determine its authenticity. Verification may be done by written or telephonic communication. All verification efforts and results must be memorialized in the inmate's medical file and should include the date and time of the contact, the name of the person contacted and the results of the contact.
9. Even with medical documentation, if it is objectively apparent to the Deputy Warden of Programs, or the DRCI, that the inmate's condition has changed since the creation of the medical documentation, or a question still exists regarding the appropriateness of the accommodation, an inmate may be required to provide authorization for medical records, may be asked to submit to a medical examination conducted by DOHMH, or their designated provider, or may be asked to waive his/her privacy rights for the limited purpose of allowing the Department to obtain medical information from the DOHMH, or their designated provider. Such waiver may be revoked by the inmate in writing at any time. If such waiver is revoked before a determination is made regarding the request for accommodation, the request may be denied.
10. An inmate, at his/her option, may either provide supporting documentation with the IRAR, and/or authorize a waiver allowing inquiry to DOHMH or their designated provider, for the limited purpose of evaluating the request for reasonable accommodation.

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V. PROCEDURES (cont.)

11. A request for a reasonable accommodation may be denied if supporting documentation deemed necessary to evaluate the request is not provided, or if the documentation provided cannot be verified as genuine. A request for an accommodation may also be denied if an inmate refuses to provide necessary information or documentation needed to evaluate the request, or refuses to waive his/her privacy rights to allow DOHMH, or their designated provider, to disclose medical information when requested to do so, or refuses to waive his/her privacy rights to allow the DRCI access to medical information about the inmate deemed necessary to evaluate the need for the requested accommodation.
12. A medical examination may not be necessary in all cases. Verifiable supporting documentation provided by the inmate alone may be sufficient to make a determination on a requested accommodation. A medical examination, or verification of medical records, should not unduly delay resolution of a request for accommodation.
13. Department staff who become aware of an inmate's disability or medical/psychological condition shall not disclose this information to other inmates or staff, except as necessary to carry out the policy of this directive. (See Section II.B.4.).
14. If the request for an accommodation under this directive is modified or denied by the Department, the inmate shall be informed of the decision in writing. This written response will advise the inmate of his/her right to grieve the decision, that the avenue to challenge a decision to modify or deny a request for a reasonable accommodation is to file a grievance and will advise the inmate how to obtain a form for this purpose (utilizing Form #3802C, attachment C). A grievance based upon a modification or a denial of a request for a reasonable accommodation is deemed to be a Step II grievance.
15. If the request for an accommodation is granted, the DRCI must inform the Deputy Warden for Programs where the inmate is housed of the determination. The Deputy Warden for Programs at the facility housing the inmate shall ensure the implementation of the accommodation and notify his/her Warden.

D. RECORD KEEPING:

A copy of all requests for accommodations, determinations and acknowledgements of such determinations shall be maintained with the DRCI, the Deputy Warden of Programs, if involved in the process, and in institutional files of the inmate.

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VI. REFERENCES

- A. Operations Order #28/89, IDENTIFICATION OF HEARING IMPAIRED/DEAF MUTE INMATES, dated 06/19/89 (as amended).
- B. Directive #3375R, INMATE GRIEVANCE RESOLUTION PROGRAM, dated 03/04/85.
- C. Operations Order 43/88, BI/MULTI-LINGUAL AND/OR SIGN LANGUAGE PROFICIENT STAFF, dated 6/22/88.
- D. Title II, subtitle A of the Americans with Disabilities Act; Title II, Pub. L. 101-336 (42 U.S.C. 12134); 23 CFR Part 35.

VII. ATTACHMENTS

- A. Form #3802A, INMATE REASONABLE ACCOMMODATION REQUEST (IRAR)
- B. Form #3802B, REASONABLE ACCOMMODATION REQUEST DETERMINATION FOR INMATES
- C. Form #3802C, ACCOMMODATION DETERMINATION ACKNOWLEDGEMENT FOR INMATES
- D. Form #3802D, NOTIFICATION TO COUNSELING SERVICES UNIT