

33-210.201 ADA Provisions for Inmates.

(1) Policy. In accordance with the Americans with Disabilities Act (ADA), 42 U.S.C. 12101 et. seq., the Department of Corrections does not discriminate, on the basis of a disability, against any inmate with regard to its programs, services, or activities for which the inmate is otherwise qualified. Inmates shall be provided the opportunity to identify the nature of any disability and to request an accommodation or auxiliary aids. Additional information on the ADA is available from the ADA Coordinator or the Intake Officer of any department facility.

(2) Definitions.

(A) Auxiliary aids and services include:

1. Qualified interpreters on-site or through video remote interpreting services; notetakers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

2. Qualified readers; taped texts; audio recordings; Braille materials and displays; screen reader software; magnification software; optical readers; secondary auditory programs; large print materials; accessible electronic and information technology; or other effective methods of making visually delivered materials available to individuals with visual impairments.

3. Acquisition or modification of equipment or devices; and

4. Other similar services and actions.

(b) Central Office ADA Coordinator – the central office employee assigned to coordinate the Department’s efforts to comply with and carry out its responsibilities under the provisions of Title I and Title II of the ADA and Section 504 of the 1973 Rehabilitation Act.

(c) Compelling Security Concern – exists where a reasonable accommodation, aid or device that has been provided or may be provided to an inmate with a disability; cannot be adequately searched for contraband; is contraband; has been altered; has been used as a weapon; can be weaponized; poses a significant likelihood of substantial harm to the inmate, another inmate or staff or can be used to facilitate an escape.

(d) Disability – refers to a physical or mental impairment that substantially limits one or more major life activities.

(e) Equally effective communication – communication with inmates with various disabilities that is equal to communication with inmates without any documented disabilities.

(f) Health care appliance – refers to devices or medical support equipment including, but not limited to, wheelchairs, canes, walkers, or hearing aids prescribed for an inmate and approved by the Office of Health Services or its designee.

(g) Major life activities – refers to activities such as caring for one’s self, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

(h) Mental impairment – any mental or psychological disorder such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(i) Physical Impairment – refers to any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, cardiovascular, respiratory, special sense organs, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine.

(j) Qualified inmate with a disability – refers to an inmate with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal or architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements of the Department for the Department program(s), service(s), or activity/activities at issue.

(k) Reasonable modification – refers to any reasonable modification that will allow a qualified inmate with a disability to participate in or make use of the programs, services or activities of a Department institution or facility.

(l) Regional ADA Coordinator – refers to the designee assigned to respond to reasonable modification or accommodation requests and coordinate the Department’s efforts to comply with and carry out its responsibilities under the provisions of Title I and Title II of the ADA and Section 504 of the 1973 Rehabilitation Act at the direction of the Central Office ADA Coordinator.

(m) Undue hardship – refers to an action that is excessively costly, extensive, substantial, or disruptive to the business being

conducted at a facility or that would fundamentally alter the nature or operation of the facility.

(3) Accommodation Request Procedure.

(a) The determination of whether an inmate has a disability shall be made by Department medical staff, either at reception or at the institution where the inmate is assigned, based upon the inmate's record of an existing physical or mental impairment or clinical evaluation of the inmate. In determining if a person's physical or mental impairment substantially limits a major life activity, the following factors shall be considered:

1. The nature and severity of the impairment;
2. The length of time the impairment is expected to last; and
3. The expected, permanent, or long-term impact of the impairment.

(b) All Department and privately operated facilities shall furnish to any inmate, upon request, a Reasonable Modification or Accommodation Request for Inmates, Form DC2-530A. Form DC2-530A is hereby incorporated by reference. Copies of this form are available from the Forms Control Administrator, Office of Research, Planning and Support Services, 501 South Calhoun Street, Tallahassee, Florida 32399-2500, <http://www.flrules.org/Gateway/reference.asp?No=Ref-14008>. The effective date of this form is 02/22.

(c) Inmates who are requesting an accommodation or modification shall submit a request in writing on the Reasonable Modification or Accommodation Request for Inmates, Form DC2-530A, specifying the type of accommodation requested and the purpose for the accommodation or modification.

1. Form DC2-530A shall be submitted to the Regional ADA Coordinator.

2. Inmates who cannot put their requests in writing shall make their verbal requests to classification, security, medical, or to the Regional ADA Coordinator who shall document the request in writing on Form DC2-530A. The staff member will sign the acknowledgement section to document the inmate's verbal request for the accommodation.

(d) Upon receipt of Form DC2-530A, the Regional ADA Coordinator shall review the inmate's accommodation request. The Regional ADA Coordinator shall, as necessary, utilize Form DC2-530B to request additional information from the appropriate program head to verify the inmate's disability or to otherwise assist with the review of the request. Form DC2-530B, Reasonable Modification or Accommodation Request Evaluation/Disposition, is hereby incorporated by reference. Copies of this form are available from the Forms Control Administrator, Office of Research, Planning and Support Services, 501 South Calhoun Street, Tallahassee, Florida 32399-2500, <http://www.flrules.org/Gateway/reference.asp?No=Ref-14009>. The effective date of this form is 02/22.

(e) The Regional ADA Coordinator shall return the completed Form DC2-530A to the inmate within 20 business days of receipt. If the complexity of the issue requires an extension of time beyond 20 business days, the inmate shall be notified in writing of such action and the reason for the extension documented on Form DC2-530A. The completed Form DC2-530A shall reflect the Regional ADA Coordinator's recommendation to approve, deny, modify, or return without action. If the request is deemed not to be an ADA issue, Form DC2-530A will be returned to the inmate without action and shall include the reason(s) for the recommendation. The completed Form DC2-530A shall also reflect the anticipated completion date, if necessary, of the accommodation.

(f) The Regional ADA Coordinator shall forward both the completed Form DC2-530A and the completed Form DC2-530B, and any supporting documents, to the Central Office ADA Coordinator within 10 business days of completion of Forms DC2-530A and DC2-530B.

(g) The Central Office ADA Coordinator shall review the request received and notify the Regional ADA Coordinator in writing of whether s/he concurs or disagrees with the Regional ADA Coordinator's recommendation.

1. The Central Office ADA Coordinator may consult with program areas within the Department for input, when appropriate, before making a final decision.

2. If the Central Office ADA Coordinator's decision is a reversal of the Regional ADA Coordinator's decision, Forms DC2-530A and DC2-530B shall be returned to the Regional ADA Coordinator with written notification stating the reasons for this action.

(h) Upon receipt, the Regional ADA Coordinator will take steps to comply with the decision of the Central Office ADA Coordinator and provide written notification to the inmate of the actions to be taken. The Regional ADA Coordinator will provide the Central Office ADA Coordinator written notification when the action has been completed.

(i) Copies of the requests and all other documentation shall be placed in the inmate's classification file.

(4) Justification for Denial of Requests for Accommodation. A request for a particular accommodation shall be denied for any

of the following reasons:

(a) A legitimate penological interest:

1. A request for a particular accommodation shall be denied when it would pose a significant risk of substantial harm to the health or safety to the institution, staff, or others that cannot be eliminated or reduced by a reasonable modification, or when the request would adversely impact other penological interests, including deterring crime and maintaining inmate discipline.

2. Public safety and the health, safety, and security of all inmates and staff shall remain the overriding considerations in determining what constitutes a reasonable modification.

(b) The Department, taking into consideration all the available resources and giving consideration to the expressed preference, if any, of the inmate, need not take an action to provide accessibility to a service, program or activity if the action would impose or require:

1. An undue financial burden on the agency where, in a cost benefit analysis, its costs would be an unjustifiable expenditure of public funds.

2. An undue administrative burden on the agency; or

3. A fundamental alteration of the nature of the service, program, or activity.

(c) An institution cannot deny a request for accommodation as an undue burden without contacting the Central Office ADA Coordinator. The Central Office ADA Coordinator or designee shall consult with the appropriate central office program area in which a particular accommodation is requested and any necessary Department staff before making a determination that a requested accommodation would constitute an undue financial or administrative burden on the agency or a fundamental alteration to the nature of a service, program, or activity. The final decision that compliance with the requested accommodation would result in an undue financial or administrative burden or a fundamental alteration of the nature of a service, program, or activity shall be made by the Secretary or the Secretary's designee after consideration of all resources available for use in the funding and operation of the service, program or activity. The final decision must be accompanied by a written statement of the reasons for reaching the conclusion. The decision and the statement will be retained by the Central Office ADA Coordinator.

(d) Compelling Security Concern. When the Central Office ADA Coordinator is notified or otherwise becomes aware of a compelling security concern relating to a reasonable modification, they will consult with the warden, the appropriate central office program area in which the particular modification is requested, and any other necessary Departmental staff prior to determining whether a requested modification poses a compelling security concern.

(e) Equally Effective Means. A request for a particular accommodation shall be denied if, after considering all available resources and the express preference, if any, by the inmate, an equally effective reasonable modification or access to a program, service, or activity can be afforded through a less burdensome or intrusive alternative method.

(f) A request that does not present a violation of Title II of the ADA does not qualify as an ADA issue and will be returned without action.

(5) Complaints and Accommodation Appeals. Inmates who have a complaint alleging a violation of the Americans with Disabilities Act or who want to appeal the denial of a request for accommodation shall follow the grievance procedures set forth in Chapter 33-103, F.A.C.

(6) Auxiliary Aids and Services. The Department will provide inmates with auxiliary aids and services whenever necessary to ensure equal access to programs, services, or activities offered by the Department. When an auxiliary aid or service is deemed necessary to provide an inmate with an equal opportunity to participate in a program, service or activity, it shall be provided at the expense of the Department.

(7) Possession of Health Care Appliances.

(a) Health care staff shall identify health care appliances as property of the inmate and appropriately document them as such in accordance with Rule 33-602.201, F.A.C.

(b) Any health care appliance a disabled inmate has properly obtained while in the Department's custody shall not be removed unless:

1. there are legitimate and documented safety or security reasons for its removal; or

2. a physician or dentist determines that the appliance is no longer medically necessary or appropriate.

(8) Educational and work programs. Inmates with disabilities shall have the opportunity to participate in educational and work programs.

(a) Inmates shall be evaluated to participate in an educational or work program on a case-by-case basis.

(b) Eligibility to participate in any program is dependent on the inmate's ability to perform the essential functions of the program with, or without, reasonable modification to rules, policies, or practices, and on meeting the Department's requirements for the program.

(9) Visiting. Inmates with disabilities will be provided reasonable modifications for purposes of visitation.

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