

 Corrections and Community Supervision DIRECTIVE	TITLE		NO. 2614
	Reasonable Accommodations for Incarcerated Individuals with Disabilities		DATE 09/17/2020
SUPERSEDES DIR # 2614 Dtd. 02/26/2019	DISTRIBUTION A B	PAGES PAGE 1 OF 5	DATE LAST REVISED
REFERENCES (Include but are not limited to) Americans with Disabilities Act; ACA Expected Practices 5-ACI-2C-11, 5-ACI-2C-12, 5-ACI-2C-13, 5-ACI-5E-02, 5-ACI-5E-03, 5-ACI-7-D-13, 2-CI-5A-1, 1-ABC-2C-08, 1-ABC-5A-03; Dirs. #2612, #4040	APPROVING AUTHORITY 		

I. POLICY: Title II (Subtitle A) of the Americans with Disabilities Act (ADA) prohibits State and local entities from discriminating against any qualified individual with a disability in their programs, services, and activities. Therefore, the programs and services provided to incarcerated individuals by this agency, or those that may be contracted to other entities, must ensure accessibility and usability by qualified incarcerated individuals in the most integrated setting. The Department is required to make reasonable accommodations or modifications to existing policies and procedures to allow qualified incarcerated individuals with disabilities the same opportunity as non-disabled incarcerated individuals, unless to do so would be an undue burden to the Department, cause a fundamental alteration to a program, or compromise the safety or security of the facility.

NOTE: Requests for reasonable accommodations from incarcerated individuals with sensorial disabilities are described in Directive #2612, "Incarcerated Individuals with Sensorial Disabilities." This directive does not supersede the requirements outlined in Directive #2612.

II. DEFINITIONS

A. Individual with a Disability

- a. Anyone who has a physical or mental impairment that substantially limits one or more of the person's major life activities;
- b. "Major life activity" includes functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, learning, and working;
2. "Substantially limits" means that the impairment imposes a significant barrier in the performance of a major life activity;
3. Anyone who has a record of such an impairment; and
4. Anyone who is regarded as having such an impairment. The determination of whether an impairment substantially limits a major life activity shall be made without regard to the improvement made to a major life activity by the use of any of the following:
 - a. Medication, medical supplies, equipment or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants, or other implantable hearing devices
 - b. Use of assistive technology

- c. Reasonable accommodations or auxiliary aids or services
 - d. Learned behavioral or adaptive neurological modifications
- (EXCEPTION: The improvement made to sight by the use of ordinary eyeglasses or contact lenses SHALL be considered in determining whether impairment limits a major life activity.)

- B. **Reasonable Accommodation:** Any change in the environment, policies or procedures, or the manner in which tasks are completed that enables a qualified individual with a disability to participate in a program or service. Reasonable accommodations might include the following:
1. Providing a note taker, mobility escort, or daily living skills aide;
 2. Acquisition or modification of equipment or devices (such as lowering a telephone, raising a typing table in the law library, or providing a cup for an incarcerated individual who cannot access drinking fountains);
 3. Allowing the use of an elevator so that an incarcerated individual with a mobility impairment can access a program; and
 4. Delivering commissary or packages if those areas are not accessible to an incarcerated individual in a wheelchair or with a mobility impairment.

NOTE: Requests for medical treatment, physical therapy, prosthetic devices, bottom bunk permits, or any other item required for daily living are not considered reasonable accommodations and should not be requested through the reasonable accommodation process. Requests for such items should be made through the facility medical unit.

- C. **Qualified Individual With A Disability:** Means an individual with a disability who, with the assistance of a reasonable accommodation, is able to meet the essential eligibility requirements for the receipt of services or the participation in programs or activities.
- D. **Undue Burden:** Reasonable accommodations or modifications which would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative hardship. This is a limited exception under the ADA and generally cannot be used for denying an accommodation or a modification requested for program accessibility.

III. **NOTIFICATION:** Posters notifying incarcerated individuals of the provisions of the ADA and reasonable accommodation will be conspicuously posted in reception areas and other areas accessible to incarcerated individuals in all facilities (law libraries, general libraries, mess halls, school buildings, vocational buildings, and housing units). See Attachment A.

IV. **REASONABLE ACCOMMODATION PROCESS:** Requests for reasonable accommodations or modifications are an ongoing process throughout the incarcerated individual's incarceration and are reviewed on an individual basis. However, appropriate reasonable accommodations may change depending upon the abilities of the incarcerated individual and the nature of the program or activity. An incarcerated individual may request an accommodation during the reception process, upon transfer to another facility, when he or she meets eligibility for a particular program, or at any time during incarceration. For instance, an incarcerated individual who uses a wheelchair and is transferred to a facility to participate in the Alcohol & Substance Abuse Treatment (ASAT) Program may need an accommodation in order to access the ASAT dorm.

A. Requests for Reasonable Accommodations

1. Incarcerated individual requests for accommodations shall be made in writing to the Deputy Superintendent for Program Services using [Form #2614B](#), "Request for Reasonable Accommodation." Incarcerated individuals who have difficulty in communicating, understanding, or writing should contact their assigned Offender Rehabilitation Coordinator for assistance in completing [Form #2614B](#). The completed form shall be forwarded by the incarcerated individual to the Deputy Superintendent for Program Services for processing (requests for reasonable accommodations from incarcerated individuals with sensorial disabilities are outlined in Directive #2612, "Incarcerated Individuals with Sensorial Disabilities").
2. Requests for accommodations shall be acted upon within ten business days, or less if necessary, by either granting the request, denying it, or granting it with modification. In making a decision, consideration shall be given to the choice of accommodation made by or on behalf of the incarcerated individual, but the facility may grant an alternative accommodation if such a choice provides the needed access to programs or services.

The Deputy Superintendent for Program Services shall obtain medical verification of the incarcerated individual's disability by forwarding the request form to the facility medical unit. A medical examination may be necessary to verify the existence of a disability that is not obvious or to verify the severity of the limitations. If previous medical verification exists, subsequent reexamination is not necessary with every new request for a reasonable accommodation, unless it appears the incarcerated individual's condition has changed or a question exists regarding the appropriateness of the accommodation. If further medical examination or assessment is required, a decision regarding the accommodation will be made after medical verification is obtained.

The Facility Health Services Director or designee shall indicate in [Form #2614B](#) that there is no medical verification on file and that an examination/consult has been scheduled. The incarcerated individual shall be informed by the medical staff that a determination will be rendered after medical verification of his or her disability. After medical verification is obtained, [Form #2614B](#) shall be returned to the Deputy Superintendent for Program Services for final determination.

3. If a disabled incarcerated individual with severe mobility impairment is unable to access the recommended or required program, service, or activity because of the physical layout of the facility, and after Health Services has determined the appropriate level of health treatment can be provided at the current facility, an email from the Deputy Superintendent for Program Services requesting an evaluation for transfer with a recommended facility may be sent to the Director of Guidance and Counseling.

The Director of Guidance and Counseling will, after review, make the appropriate recommendation to the appropriate Assistant Commissioner for Program Services. After ensuring all local attempts to program have been exhausted and there are no local alternatives available to program the disabled incarcerated individual, the Assistant Commissioner will then notify the requesting Deputy Superintendent for Program Services, by email, of the approval to submit an Unscheduled Transfer

Review (UTR) for the specific facility that can provide the appropriate accommodations allowing access to the programs, services, or activities.

Any further guidance or questions should be directed to the Director of Classification and Movement (518-457-6022) or to the ADA Coordinator in Central Office (518-485-5806).

4. The incarcerated individual shall be informed in writing of the determination via the completed request [Form #2614B](#). This form advises the incarcerated individual of his or her right to grieve the decision in accordance with the guidelines established in Directive #4040, "Incarcerated Grievance Program." The response form also records whether the incarcerated individual is satisfied with the determination. A copy of the completed [Form #2614B](#), shall be forwarded to the ADA Coordinator, Office of Diversity and Inclusion in Central Office.

B. Record Keeping

1. A copy of all requests for accommodations and determinations shall be maintained in the guidance folder, medical, and parole files.
2. Incarcerated Grievance Program files concerning reasonable accommodations shall be kept in the facility grievance office for at least three years following dates of final disposition.

V. **GRIEVANCE PROCEDURE:** Any incarcerated individual who disagrees with a decision on his or her request for a reasonable accommodation, or who feels he or she has been discriminated against based on a disability, can submit complaints pursuant to Directive #4040, "Incarcerated Grievance Program." The facility shall send all decisions rendered by the Superintendent or designee on reasonable accommodation, or disability discrimination grievances to the ADA Coordinator, Office of Diversity and Inclusion in Central Office. The ADA Coordinator or designee shall have the authority to initiate a review of any request for accommodation or grievance.

INCARCERATED INDIVIDUALS WITH DISABILITIES
NOTICE OF RIGHTS UNDER THE AMERICANS WITH DISABILITIES ACT

Incarcerated individuals with disabilities have the right to request REASONABLE ACCOMMODATIONS to make programs and services more accessible and usable. Under the ADA, an individual with a disability is a person who has:

- A physical or mental impairment that substantially limits one or more major life activities, such as walking, talking, hearing, seeing, caring for oneself, learning, or working;
- A record of such impairment; or
- Is regarded as having such an impairment.

A reasonable accommodation is any change in the environment or the manner in which tasks are completed that enables a qualified individual with a disability to participate in the program or service. A qualified individual with a disability is a person with a disability who, with the assistance of a reasonable accommodation, is able to meet the essential eligibility requirements for the receipt of services or the participation in programs or activities.

HOW TO ASK FOR A REASONABLE ACCOMMODATION

In _____ Correctional Facility, contact _____, Deputy Superintendent for Programs. Requests will be reviewed and responded to within ten (10) work days (unless a medical evaluation is required to determine the need for the requested accommodation). The decision shall be forwarded to the incarcerated individual in writing.

HOW TO MAKE COMPLAINTS

Incarcerated individuals whose requests for reasonable accommodation are denied or modified, or who believe they were discriminated against because of their disabilities, have the right to file a grievance in person or in writing, in accordance with Directive #4040, "Incarcerated Grievance Program."