CORRECTIONS AND THE ADA – GETTING IT RIGHT

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CULTURE AND ACCEPTANCE

ADA AND CORRECTIONS

CAPTAIN TAMEKA HULL

ARLINGTON COUNTY SHERIFF'S OFFICE
CULTURE AND ACCEPTANCE : MANAGEMENT

- ADA is the law and staff took an oath uphold the law.
- Command Staff sets the tone of acceptance for the agency
- Written ADA policy is necessary but must be relative to the environment and not simply state the law. (What does equal access mean to us?)
- Inspect what is expected regularly; accountability
- An introduction of the ADA to the agency and one time training is not enough
- In-service training and refresher must be ongoing for all employees and volunteers, not just sworn staff (updates, videos, new rulings, technology changes)
CULTURE AND ACCEPTANCE: ADA COORDINATOR

• Does staff know who your ADA Coordinator is?
• The ADA Coordinator's commitment is vital to the agency’s success of implementation and compliance.
• If ADA Coordinator is not their sole role, are they allotted enough time to ensure agency compliance?
CULTURE AND ACCEPTANCE: ADA COORDINATOR

- Is your ADA Coordinator an official empowered to make decisions?
- ADA Coordinator must manage by being audible and visible. This is not simply an administrative function in a corrections environment.
- Knowledge of polices, procedures / general orders and practices.
- The ADA Coordinator understands that the final decision to deny an accommodation comes from the Chief/Warden/Sheriff.
CULTURE AND ACCEPTANCE: POLICY, PROCEDURE, GENERAL ORDERS

• Corrections / Law Enforcement Environments are heavily policy and procedure / general orders driven.
• ADA adds the gray to the black and white environment.
• Staff are trained to do exactly what policy says to do.
• You won’t be able to write policy in a way that will ensure every possible accommodation is spelled out to the letter.
• Creating “Special Directives” for each inmate receiving an accommodation will provide more guidance for staff.
CULTURE AND ACCEPTANCE: POLICY, PROCEDURE, GENERAL ORDERS

• Modification of policies and procedures must take place so take the time to explain the importance, significance and impact of the accommodation. (Unknowingly most of the time accommodations will make staff interaction more efficient and effective)

• Accommodations and modifications may make staff uncomfortable because they fear they are breaking the rules or giving away “extra” amenities and privileges. (Reassurance from ADA Coordinator and Supervisors)
CULTURE AND ACCEPTANCE: POLICY, PROCEDURE , GENERAL ORDERS

• Instead of articulating why a particular accommodation will not work, first look at the ways that it can.

• Keep an open mind, no two inmates/arrestees are the same and must be individually assessed despite behavioral issues from an instance in the past presenting similar characteristics.

• Direct threat is not automatic. It is considered when necessary but articulation and documentation must be clear. Remember, staff are trained to recognize possible threats and mitigate them before hand. The ADA dictates a different approach.
CULTURE AND ACCEPTANCE: BASIC NEEDS

• Inmates/Arrestees must have their basic needs met

• Staff must take into consideration what “basic needs” look like to a person with a disability

• What appears to be “extra” privileges or amenities may simply be meeting a basic need at its core for a person with a disability. (e.g., additional time to communicate on a video relay phone or TTY, more time to get up for head count, more time to respond to questioning)
Just because staff have never see a particular accommodation made in the past, *does not mean the answer is NO!*

Ensure they know to involve the ADA Coordinator.
THE END
REASONABLE ACCOMMODATIONS IN CORRECTIONS

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PHILADELPHIA DEPARTMENT OF PRISONS
DISCLAIMER

• Opinions Expressed Herein or Otherwise are those of the Speaker and do not Necessarily Reflect the Views of the Philadelphia Department of Prisons.
DEFINITION OF DISABILITY

• A physical or mental impairment that substantially limits one or more major life activities (e.g., hearing, speaking, and seeing).
• A record of such an impairment.
• Being regarded as having such an impairment.
MAJOR LIFE ACTIVITIES (EXAMPLES)

- Walking
- Performing Manual Tasks
- Seeing, Hearing
- Breathing
- Caring For One’s Self
- Working
- Standing
- Lifting
- Bending
- Concentrating
- Learning
- Speaking
MAJOR LIFE ACTIVITIES INCLUDE MAJOR BODILY FUNCTION (EXAMPLES)

• Immune System
• Normal cell growth
• Digestive
• Bowel
• Bladder
• Neurological
• Brain
• Respiratory
• Circulatory
CONDITION THAT RISE TO THE LEVEL OF A "DISABILITY" (EXAMPLES)

- Deafness or hard of hearing
- Blindness
- Intellectual Disability
- Mental illness (e.g., PTSD, bipolar disorder, TBI, and schizophrenia)
- Partially or completely missing limbs
- Mobility impairments
- Autism
- Cancer, Diabetes
- Cerebral Palsy
- Epilepsy
- Addictions
- Hypertension
- Digestive disorders
SOME DISABILITIES MAY BE INVISIBLE (EXAMPLES)

- Mental illness
- Epilepsy
- Arthritis
- Hypertension
- Diabetes
- Intellectual disabilities
- Digestive disorders
- Cancer
- HIV
ADA APPLICABLE TO EVERYTHING YOU DO

- Booking
- Classification
- Phone calls
- Inmate visits
- Medical and Dental Care
- Mental Health Services
- Pill Line
- Cell Assignment
- Bed Assignment
- Religious Services
- Mail Call
- Education
PUBLIC / DETAINEE SPACES & ELEMENTS THAT MUST BE ADA COMPLIANT

- Parking lot
- Entrance
- Check-in counter
- Waiting room
- Interview room
- Visitation areas
- Drinking fountains
- All public areas

- Housing
- Classrooms
- Infirmary
- Work
- Visitation
- Dining
- Toilets / showers
- All inmate spaces
WHAT DOES AN ACCOMMODATION LOOK LIKE IN A CORRECTIONS SETTING?

• What is the need?
• How can it best be met?
• What if you don’t think it is doable?
• What modifications to policy and procedure may be necessary?
• Follow-up to ensure need being met.
• Let’s talk about safety concerns!
FIRST STEPS IN PROVIDING AN ACCOMMODATION

• What is the need?
  • The type of disability will dictate the accommodation needed.

• How can the accommodation best be met?
  • Same disability doesn’t always mean same accommodation (example: a person who is deaf, blind, uses a mobility device).
HOW TO DETERMINE PRACTICALLY OF ACCOMMODATION REQUEST

• Many accommodation request will be “easy” to provide.

• What if you don’t think the accommodation request is doable?
  • Explore *all* options. It is important to remember the requirement of the ADA
  • Each request will need to be reviewed on a case by case basis to determine feasibility.
HOW DOES THE REQUESTED ACCOMMODATION IMPACT EXISTING POLICY AND PROCEDURES?

- What modifications to policy and procedure may be necessary?
  - This may require interaction within different areas of the facility.
  - Don’t assume that something is not possible due to existing policy and procedures.
ENSURING ACCOMMODATION IS EFFECTIVE

• Follow-up to ensure accommodation is still meeting the need.
  • Be aware that things can change over time, and the accommodation may need to be revised to continue to provide the intended result for the individual.
THE REQUESTED ACCOMMODATION AND SAFETY

• Let’s talk about safety concerns!
IGNORANCE OF THE ADA’S LEGAL REQUIREMENTS IS NOT A VALID DEFENSE

THANK YOU!

A BIG “THANK YOU” TO STEVE GORDON, ASSISTANT UNITED STATES ATTORNEY

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THE END
CORRECTIONS AND THE ADA

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VIRGINIA DEPARTMENT OF CORRECTIONS
ANIMATING PRINCIPLE OF THE ADA

No qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity. 42 U.S.C. § 12132; see also 28 C.F.R. §§ 35.130(a); 35.152(b)(1).

The ADA is a broad civil rights statute that covers a wide range of activities.
DOJ HAS EMPHASIZED THE IMPORTANCE OF CORRECTIONAL FACILITIES COMPLYING WITH THE ADA

“The Department wishes to emphasize that detention and correctional facilities are unique facilities under title II. Inmates cannot leave the facilities and must have their needs met by the corrections system, including needs relating to a disability. If the detention and correctional facilities fail to accommodate prisoners with disabilities, these individuals have little recourse, particularly when the need is great (e.g., an accessible toilet; adequate catheters; or a shower chair). It is essential that corrections systems fulfill their nondiscrimination and program access obligations by adequately addressing the needs of prisoners with disabilities, which include, but are not limited to, proper medication and medical treatment, accessible toilet and shower facilities, devices such as a bed transfer or a shower chair, and assistance with hygiene methods for prisoners with physical disabilities.” Section-by-Section Guidance and Analysis of the ADA Regulations
THE ADA REQUIREMENTS APPLY TO CONTRACTORS THAT OPERATE IN A CORRECTIONAL FACILITY

“[T]hrough its experience in investigations and compliance reviews, the Department [DOJ] has noted that public entities contract for a number of services to be run by private or other public entities, for example, medical and mental health services, food services, laundry, prison industries, vocational programs, and drug treatment programs, all of which must be operated in accordance with [the ADA’s] title II requirements.”

Section-by-Section Guidance and Analysis of the ADA Regulations
ADA SELF-EVALUATION

The ADA regulations state:

“A public entity, within one year of the effective date of this part, evaluate its current services, policies, and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such services, policies, and practices is required, the public entity shall proceed to make the necessary modifications.” 28 C.F.R. § 105(a).
ISSUES THAT HAVE ARISEN IN ADA CASES (STRUCTURAL ISSUES)

• Failure to have an ADA Coordinator who understands the ADA’s requirements and to disseminate the identity of the ADA Coordinator to inmates and the public.

• Failure to conduct periodic audits of a detention facility’s ADA compliance, including architectural and audits of technology such as VRI.

• Failure to conduct a needs assessment when the detention facility learns about an inmate’s disability.

• Failure to conduct ongoing needs assessment to ensure that an inmate’s disability related needs are being met.
ADA EFFECTIVE COMMUNICATION REQUIREMENTS

• Ensure that communications with detainees with hearing and vision disabilities are as effective as communications with others, which includes furnishing auxiliary aids and services that will ensure effective communication.
• Use flashing lights, note card or other methods of communication to notify inmates who are deaf or have low hearing about events such as count, meals, yard, sick call, and when it is time to wake up.
• Do not discipline an inmate for not respond to instructions that s/he could not hear or could not read.
ISSUES THAT HAVE ARISEN IN ADA CASES
(EFFECTIVE COMMUNICATION)

• Failure to provide a sign language interpreter for complex communications.
• Failure to give “primary consideration” to the request of an individual with a communication
disability on the type of auxiliary aid or service with ensure effective communication.
• Refusal to provide auxiliary aids and services due to cost.
• Inappropriate reliance on hand-written notes for individuals whose primary means of
communication is American Sign Language.
• Erroneously assuming that an individual who is deaf or hard of hearing can read lips and does
not need an auxiliary aid or service.
ISSUES THAT HAVE ARISEN IN ADA CASES (MEDICAL)

• Failure to provide proper medical care to individuals with disabilities, including medications, diabetic monitoring, medical equipment (catheters, urine bags and cleaning supplies).

• Failure to provide medically necessary special diets.

• Failure to provide medically necessary shoes.
2010 REGULATIONS AND STANDARDS (EXAMPLES)

- 3% of the total number of cells in a facility must have mobility features
- Cells with mobility features shall be provided in each classification level
- At least 1 cell for each special purpose
ISSUES THAT HAVE ARISEN IN ADA CASES (PHYSICAL ACCESS)

• Failure to have accessible showers.
• Failure to have accessible routes to program areas.
• Failure to have accessible transportation.
• Failure to have sufficient cells that are accessible.
• Failure to have accessible recreation areas.
DETENTION FACILITIES SHALL NOT

Place detainees with disabilities

- In inappropriate security classifications because there is no accessible cell or bed
- In medical areas unless they are receiving medical care or treatment
- In facilities that do not offer the same programs as facilities where they otherwise would be housed
ADA MYTHS

• “ADA Approved” There is no national process for proving ADA related goods or services
• “ACA and NCCHC Accreditation equals compliance with ADA” It does not
• “Compliance with local and State codes equals compliance with the ADA” It does not
ADA PROHIBITIONS

• Do not **retaliate** against anyone exercising his or her ADA rights.
• Do not **coerce** someone into not exercising rights under the ADA.
• Do not impose a **surcharge** for anything required by the ADA.
THANK YOU!

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