

WEBER COUNTY CORRECTIONAL FACILITY

Volume

AMERICANS WITH DISABILITIES ACT REQUIREMENTS

Chapter

JO 01 - INMATE ADA REQUIREMENTS

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JO 01/01.00 **GENERAL**

JO 01/01.01 **Purpose**

- A. The purpose of this chapter is to provide Policy and Procedure necessary to comply with the requirements outlined in the Americans with Disabilities Act (ADA) of 1990 as they apply to the provision of inmates services and programs.
- B. Inmate work assignments are not deemed programs for the purpose of this policy.

JO 01/01.02 **Cross Reference**

JC 02 - Admission and Initial Risk Assessments

JD 05 - Inmate Grievances

JH 01 - Medical Custody Interface

JO 01/01.03 **Definitions**

accommodations	the making of existing facilities, programs, services, and activities accessible and usable to meet the basic of individuals with disabilities
ADA	Americans with Disabilities Act (42 U.S.C. Sec. 12101 - 12213)
Americans with Disabilities Act	an act that prohibits discrimination against individuals with disabilities
deaf or hearing impaired	individuals who are functionally deaf, with or without hearing aids, and who may need assistance
HIV	Human Immunodeficiency Virus
mental impairment	mental or psychological disorder (e.g., mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities)
physical impairment	physical condition(s) that substantially limits a major life activity, including but not limited to: orthopedic, visual, speech and hearing impairments; cerebral palsy; epilepsy; muscular dystrophy; multiple sclerosis; cancer; heart disease; diabetes; HIV disease (symptomatic or asymptomatic); tuberculosis; drug addiction; and alcoholism
R & O	Reception and Orientation

WCCF

Weber County Correctional Facility

JO 01/02.00 **GUIDELINES**

JO 01/02.01 **Policy**

It is the policy of the WCCF:

- A. to comply with the Americans with Disabilities Act (ADA);
- B. to identify what is meant by physical and mental impairment; and
- C. that disabled inmates may not be excluded from participation in or be denied benefits, programs, or activities on the basis of a disability, if they otherwise meet the essential eligibility requirements.

JO 01/02.02 **Rationale**

The ADA is a Federal anti-discrimination statute designed to remove barriers which prevent individuals with disabilities from enjoying the same opportunities that are available to persons without disabilities.

JO 01/02.03 **Law**

ADA has three major areas:

- A. Title I, Equal Employment Opportunity for individuals with disabilities;
- B. Title II, nondiscriminatory on the basis of disability in state and local government services; and,
- C. Title III, nondiscriminatory on the basis of disability by public accommodations and in commercial facilities.

Title II, Sub Title A will be the primary focus of this chapter. Title I and III will be regulated by Policy and Procedure promulgated by allied county policy—more specifically, county Human Resources (Personnel) and Property Management.

JO 01/02.04 **Procedure: Categories of Individuals with Disabilities**

A. **Categories**

- 1. Individuals who have a physical or mental impairment that substantially limits one or more major life activities.
- 2. Individuals who have a record of a physical or mental impairment that substantially limited one or more of the individual's major life activities.
- 3. Individuals who are regarded as having such an impairment, whether

they have the impairment or not.

B. Exclusion

The following conditions are specifically excluded from the definition of “disability”:

1. transvestism;
2. transsexualism;
3. pedophilia;
4. exhibitionism;
5. voyeurism;
6. gender;
7. identified disorders not resulting from physical impairments;
8. other sexual behavior disorders;
9. compulsive gambling;
10. kleptomania;
11. pyromania; and
12. psychoactive substance abuse disorders resulting from current illegal use of drugs.

C. Physically Impaired

1. Physical Impairment includes:
 - a. physiological disorders or conditions;
 - b. cosmetic disfigurement; or
 - c. anatomical loss.
2. The impairment affects one or more of the following body systems:
 - a. neurological;
 - b. musculoskeletal;

- c. special sense organs which would include speech organs that are not respiratory (i.e., vocal cords, soft palate, tongue);
 - d. respiratory (including speech organs);
 - e. cardiovascular;
 - f. reproductive;
 - g. digestive;
 - h. genitourinary;
 - i. hemic and lymphatic;
 - j. skin; and
 - k. endocrine.
3. Specific examples of physical impairments include but are not limited to:
- a. orthopedic;
 - b. visual;
 - c. speech and hearing impairments;
 - d. cerebral palsy;
 - e. epilepsy;
 - f. muscular dystrophy;
 - g. multiple sclerosis;
 - h. cancer;
 - i. heart disease;
 - j. diabetes;
 - k. HIV disease (symptomatic or asymptomatic);
 - l. tuberculosis;
 - m. drug addiction; and

n. alcoholism.

4. Simple characteristics such as the color of one's eyes, hair, or skin, baldness, left-handedness, or age do not constitute physical impairments.

D. Mentally Impaired

1. Mental impairments include mental or psychological disorders, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.
2. Disadvantages attributed to environment, culturally, or economic factors are not impairments covered by Title II.
3. Mental impairment does not include common personality traits such as poor judgment or a quick temper, where these are not symptoms of a mental or psychological disorder.
4. Mental impairment does not include homosexuality or bisexuality.

E. Drug Addiction as an Impairment

1. Drug addiction is an impairment under the ADA.
2. A public entity may base a decision to withhold services or benefits in cases an addict is engaged in the current illegal use of drugs.
3. Illegal use of drugs means the use of one or more drugs, the possession or distribution of which is unlawful under the Controlled Substance Act.
 - a. Illegal use does not include use of controlled substances pursuant to a valid prescription, or other uses that are authorized by the Controlled Act or other Federal Law.
 - b. Current use is the illegal use of controlled substances that has occurred recently enough to justify a reasonable belief that person's drug use is current or that continuing use is a real and on-going problem.
4. Title II protects drug addicts who no longer take controlled substances.
 - a. Title II prohibits discrimination against drug addicts based solely on the fact that they have previously illegally used controlled substances.

- b. Protected individuals include persons who have successfully completed a supervised drug rehabilitation program or have otherwise been rehabilitated successfully and who are not engaging in current illegal use of drugs.
- c. Additionally, discrimination is prohibited against an individual who is currently participating in a supervised rehabilitation program and is not engaging in current illegal use of drugs.
- d. Finally, a person who is erroneously regarded as engaging in current illegal use of drugs is protected.

JO 01/03.00 **GENERAL PROGRAM REQUIREMENTS**

JO 01/03.01 **Policy**

It is the policy of the WCCF:

- A. to afford inmates opportunities to request accommodations under the ADA;
- B. to adopt and implement a plan which provides reasonable accommodations and access to persons with disabilities; and
- C. to allow the WCCF Jail Commander/designee opportunity to review requests for accommodations to ensure health and safety factors that have been considered and that the accommodation would not place an undue burden or would fundamentally alter services, programs, or activities (35CFR section 35.150 pg. 35709).

JO 01/03.02 **Rationale**

Reasonable accommodations and access for persons with physical or mental impairment are required by ADA.

JO 01/03.03 **Procedure: Essential Eligibility Requirements**

- A. To be qualified, the individual with a disability must meet the essential eligibility requirements for receipt of services or participation in a public entity's programs, activities, or services with or without:
 - 1. reasonable modification to a public entity's rules, policies, or practices;
 - 2. removal of architectural barriers, communication, or transportation barriers; or
 - 3. provisions of auxiliary aids and services.
- B. The "essential eligibility requirements" for participation in many activities or public entities may be minimal. However, under other circumstances that "essential eligibility requirements" are imposed by a public entity may be quite stringent.
- C. Health and safety factors may be taken into account in determining who is qualified.
 - 1. A person who poses a direct threat to the health and safety of others

will not be “qualified” for the receipt of the service that presents the direct threat.

2. A “direct threat” is a significant risk to the health or safety of self or others that cannot be eliminated or reduced to an acceptable level by the public entity’s modification of its policies, practices, or procedures, or by the provision of auxiliary aids or services.
3. The public entity’s determination that a person poses a direct threat to the health or safety of self or others must be based on an individualized assessment that relies on current medical evidence, or on the best available objective evidence, to assess:
 - a. the nature, duration, and severity of the risk;
 - b. the probability that the potential injury will actually occur; and
 - c. whether reasonable modifications of policies, practices, or procedures will mitigate or eliminate the risk.

JO 01/03.04 **Procedure: Assessment Referral Process**

Inmates and offenders shall provide the WCCF with a brief medical history:

- A. usually within arriving at the WCCF Booking area; and
- B. prior to being housed with the general population.
 1. No inmate may be assigned to a regular housing assignment prior to being assessed by classification staff.
 2. A medical history interview should be conducted by Booking staff upon arrival.
 3. The medical assessment interview should be conducted using the Medical Assessment form.
 4. The Intake Medical Assessment should identify obvious and apparent disabilities upon observation, or as claimed by the inmate.
 5. The Booking staff should provide the Medical Unit and ADA coordinator information obtained during the intake process as appropriate.
 6. The Medical Unit should schedule and conduct a medical assessment of the inmate prior to the inmate moving from the R&O unit.

7. During the medical assessment/interview the medical staff shall document ADA considerations.
8. The medical information shall be filed in the inmate's medical chart.
9. A report concerning any requested accommodations shall be forwarded by the Medical Unit to the Classification Officer and then to the ADA coordinator.

JO 01/03.05 **Procedure: Program Accessibility**

- A. Qualified inmates with disabilities must be provided an equal opportunity to that provided other inmates to participate in and benefit from the programs, activities, and services of WCCF.
- B. Efforts shall be made to ensure that program service or activity access does not result in unnecessary segregation of those with disabilities. However, an inmate may decline any offered separate or special accommodations.
- C. Separate or special programs may be necessary to provide inmates with disabilities an equal opportunity to benefit from WCCF programs. Such programs shall be specifically intended to meet the needs of the individuals with disabilities for whom they are provided.
- D. The Weber County Library can access the Utah State Library and the U.S. Library of Congress and provide special library services for individuals who qualify as blind or physically disabled, and who could not otherwise use a regular library, with some limitations to services.

JO 01/03.06 **Procedure: Equality in Participation/Benefits**

- A. Qualified inmates with a disability are entitled to participate in regular programs even though it is reasonable to believe that they would not benefit from them.
- B. Where necessary, access to separate or special programs for inmates with disabilities should be offered. However, an individual qualified under ADA cannot be denied participation in the regular programs.

JO 01/03.07 **Procedure: Program Modifications/Reasonable Modifications**

- A. When a special program is offered for inmates with a particular disability, but

the inmate elects to participate in the regular program rather than in the separate program, WCCF must make accommodations for the inmate to benefit from the regular program when such accommodations do not result in an undue burden or fundamentally alter the program or activity.

- B. Eligibility criteria for participating in programs, services, or activities shall not screen out or tend to screen out persons with disabilities, unless it can be shown that such requirements are necessary for the provision of the programs, services, or activity.
- C. Restrictions may be placed on programs or activities if legitimate safety and security requirements are necessary to maintain a safe and secure operation.
- D. WCCF should reasonably modify existing policies, procedures, and practices to avoid discrimination of disabled inmates, except where the modifications would fundamentally alter the nature of the regular program, service or activity.

JO 01/03.08 **Procedure: Contracting for Services**

- A. The WCCF should use County resources or enter into an agreement to provide services for the deaf or hearing impaired inmates.
- B. Interpreters should be utilized for inmates that are deaf or hearing impaired for medical issues, disciplinary hearings, attorney contact, critical incidents, etc.
- C. It shall be the responsibility of the inmate to notify the ADA Coordinator when an appointment with an attorney has been requested and/or they wish to talk with an interpreter.
 - 1. The ADA Coordinator shall:
 - a. arrange for an interpreter;
 - b. ensure proper clearances are prepared to allow interpreters access to the facility;
 - c. notify the inmate of the time the interpreter will be available; and
 - d. ensure proper documentation of the request is made in the inmate's file.
 - 2. The Medical Unit shall notify the ADA Coordinator to arrange for an interpreter for the hearing impaired inmates for medical appointments. It shall be the responsibility of the inmate to include any special

accommodations required for medical appointments on a sick slip form.

3. Requests for an interpreter should be facilitated within three working days of the request. Exception: Emergency situation requests should be facilitated within 24 hours.

JO 01/03.09 Procedure: Process for Inmates to Initiate a Request for ADA Accommodations

- A. Inmates with a disability requesting accommodations under ADA should do so in R&O at the time of the intake classification interview.
- B. Except when initially identifying a disability and the need for accommodations in R&O, inmates may request accommodations by completing the ADA Request form and submitting it to the ADA Coordinator.
- C. Inmates who cannot put their requests in writing may make the request verbally, or by other means, and to the ADA Coordinator, then the Housing Unit officer, who will put the request in writing and have the inmate sign or otherwise acknowledge the request.

JO 01/03.10 Procedure: Facility ADA Coordinator Responsibility

- A. The Jail Commander shall designate an individual as the WCCF ADA Coordinator to accept and coordinate ADA requests from inmates.
- B. The Jail Commander/designee shall post in all housing units the name of the Facility ADA Coordinator for staff and inmates.
- C. Inmates requesting special consideration under ADA requirements shall submit a request in writing to the ADA Coordinator.
 1. The ADA Coordinator shall log and date stamp the request upon receipt.
 2. The ADA Coordinator shall forward the request the Medical Unit within 72 hours of receipt of a request of medical verification that a disability exists.
 3. The Medical Unit shall assess the request and return the request within five working days affirming or denying a medical condition exists, including recommendations.
 4. The ADA Coordinator shall forward a copy of the completed medical request to the Jail Commander/designee.
 5. If the ADA Coordinator determines that a reasonable accommodation

can be made within the scope of his authority, the accommodation shall be made within a timely manner.

6. A copy of the request and written response shall be filed in the inmate's facility file.
 7. The Jail Commander/designee shall take necessary action to determine if compliance with the request does not have a negative impact on health and safety or would cause an undue burden or would fundamentally alter services, programs, or activities.
- D. Staff receiving requests from inmates for special consideration under ADA requirements should refer the inmate to the ADA Coordinator and advise the inmate of the proper process to be utilized.
- E. In exigent circumstances a staff member may take appropriate steps to facilitate the request utilizing proper procedures.

JO 01/03.11 **Procedure: Jail Commander Responsibility**

- A. Upon receipt of the ADA request from the WCCF ADA Coordinator, the Jail Commander shall review all evidence presented. If the Jail Commander concludes that a disability as defined in the ADA exists and that the requester otherwise comes within the protection of the ADA, the Jail Commander shall determine whether a reasonable accommodation for the requesting inmate will be made.
1. If the Jail Commander decides that a disability as defined by the ADA does not exist, the inmate shall be notified of that decision and the supporting rationale. If the requester disagrees with the decision, the requester may use the process as outlined in JD 05, Inmate Grievances.
 2. If the Jail Commander determines that a reasonable accommodation will be made, the Jail Commander shall direct the facility staff to make the accommodations in a timely manner and cause notice to be given to the inmate concerning the decision and action directed.
 3. If the Jail Commander determines that any reasonable accommodation would impose a direct threat to the health or safety of others, that determination will be documented in writing and the inmate will be notified that no accommodation will be made because of the health or safety threat. If the requester disagrees with the Jail Commander

decision, the requester may use the process as outlined in JD 05. Inmate Grievances.

4. If the Jail Commander determines that a reasonable accommodation cannot be made because it would result in a fundamental alteration in the nature of the program or an undue financial and administrative burden, the Jail Commander must:
 - a. take other action (i.e., provide an alternative accommodation or auxiliary aid) that would not result in such burdens or alteration but would nevertheless, to the maximum extent possible, provide the inmate with an equal opportunity to participate in, and benefit from the programs, activities, and services available to inmate; or
 - b. if he determines that there is no alternate reasonable accommodation, reduce his findings and conclusions to writing stating all supporting rationale and shall forward the entire file to the Weber County Sheriff.
- B. The Sheriff shall review the file, and within five (5) working days and shall return the file to the Jail Commander for investigation and consideration or action favorable to the inmate as directed by the Sheriff.
 1. The Sheriff has the sole authority to determine that a reasonable accommodation will not be made because it would result in a fundamental alteration in the nature of a program or an undue financial and administrative burden.
 2. The Sheriff's finding and conclusion shall likewise be documented.
- C. The action of the Weber County Sheriff whether favorable or unfavorable to the requester, should be returned for implementation. The Jail Commander shall cause that the requester be notified of the Weber County Sheriff's decision.
- D. The complete file on an inmate request for an accommodation under the ADA shall be maintained.

JO 01/03.12 **Procedure: Documentation**

- A. It shall be the responsibility of the Facility ADA Coordinator to:
 1. track requests for special accommodations;

2. ensure documentation is completed on action taken for each request;
 3. maintain a file and list of all requested ADA considerations; and
 4. update the list of ADA considerations each month, and forward a copy to the Jail Commander and Lieutenants.
- B. It shall be the responsibility of the Medical Unit to provide verification of the medical need when requests for special consideration are made.
- C. Copies of all ADA requests shall be filed in the inmate's institutional file.