Corrections and the ADA:
Balancing the rights of people with disabilities while incarcerated

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Historical Overview of Corrections

◆ Physical Punishments
◆ Exile and Transportation
  – An 1597 English law authorized the transportation of inmates to newly discovered lands.
    ◆ Allowed inmates to be housed aboard hulks
    ◆ When this proved impractical, shifted to Australia
Incarceration

◆ Pieter Speierenburg
◆ Bondage “any punishment that puts severe restrictions on the condemned person’s freedom of action and movement, including, but not limited to, imprisonment.”
◆ First “workhouse” in England was called Bridewell. Became informal repository for those the community regarding as inconvenient or mentally ill.

Emergence of the Prison

◆ William Penn
◆ Philosophical shift away from punishment of the body, toward punishment of the soul or human spirit
◆ The passage of laws preventing imprisonment of anyone but criminals (not longer those who are mentally ill)
Defining Supreme Court Decisions

- Pennsylvania Department of Corrections v. Yeskey (97-634) 118 F. 3d 168, 1998

Bottom Line: Title II of the ADA, which prohibits a “public entity” from discriminating against a qualified individual with a disability, covers inmates in state prisons

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Yeskey

- “One of the primary functions of government is the preservation of societal order through enforcement of the criminal law, and the maintenance of penal institutions is an essential part of that task. It is difficult to imagine an activity in which a State has a stronger interest.”

- Justice Scalia
Supreme Court Decision

- United States v. Georgia et al. No. 04-1203 2006

Bottom Line: Inmates can sue for monetary damages in some instances. States do not have sovereign immunity under the ADA for disability based constitutional violations in correctional settings.

Goodman

- The deliberate refusal of prison officials to accommodate Goodman’s disability-related needs in such fundamentals as mobility, hygiene, medical care, and virtually all other prison programs constituted “exclusion from participation in or denial of the benefits, programs and activities”.
Policies and Procedures

- ADA Coordinator for both inmates and staff
- Self-Evaluation and Transition Plan
- ADA Request for Accommodation Policy (AR or OM)
- Grievance Procedure
- Training
- ACA Standards

Why Have Formal Policies

- Are you obligated to have specific policies for accommodation requests?
- If policies are in place and can be used for reference, it is more likely the request will be handled appropriately and consistently
- Assists in documentation of effort to comply with the ADA
- Administrative Regulations/Grievance Process (Prison Litigation Reform Act)
How do You Determine ADA Eligibility of Inmates and/or Staff

- Medical documentation – How and When
- Who makes the request for medical information and what type can be requested
  - Establish there is an ADA disability
  - Information should be related only to the issue at hand;
  - Support for the requested accommodation
  - Assist in determination of accommodation options
- What if employee disagrees with determination—can you obtain a second opinion?
- Ensure ADA medical information is in separate file, not a part of employee’s personnel file; inmate is part of medical file; medication request

Request for Accommodation

- What triggers a request for accommodation for inmate, or for employee
- Written request-or verbal?
- Critical to engage in the Interactive Process
- What is the point of the Interactive Process
- When is the interactive process triggered
Employee Reasonable Accommodation

- Light or Modified Duty?
- Assignment to different post where rotation is standard operating procedure
- Accommodations for mandatory training such as weapons, self defense
- Be clear on Essential v Non-Essential Functions (Job Task Analysis etc.)
- Key is to eliminate barriers in the work environment that do not create an undue hardship
- Remember Case by Case determination

How the ADA Impacts Security Direct Threat

- Assurance Security will not be jeopardized
- Defined as significant or substantial harm to oneself or others that cannot be reduced or eliminated
- Applicable to both inmate and employee issues
- Obligation to have a safe work environment
- Need to consider the following when assessing if someone poses a direct threat:
Direct Threat Considerations

- The nature of the risk
- The severity of the potential harm
- The imminence, or likelihood, of the harm
- The duration of the risk
- Must be an individualized assessment based on reasonable medical judgment rather than stereotypes or assumptions about disabilities
- The advisability of any reasonable accommodation/s or other steps that might reduce or eliminate the risk

Program Access for Inmates

- You have an obligation to ensure program access to inmates who are qualified for the program or services to which they seek access
- Education programs need to consider IDEA if dealing with youthful offenders
- Ensure effective communication is provided (alternative formats materials, interpreters, readers, etc.)
- Partner with Commission for Deaf and Hard of Hearing
Education Programming

- Dyslexia – often call the “hidden” disability in prison
- ADD, ADHD and Autism (mild on the spectrum)
- ADA compliance but also vital to understand why they have difficulty learning-second chance to succeed
- Understanding will allow for appropriate planning for inmate’s programming

Stats

- One half of inmates are at or below Level 1 in reading (11 yr old)
- Two thirds are below Level 1 in math
- Four fifths are below Level 1 in writing
- 30% were truants on a regular basis
- *Clark Study 2001* – Inmates who do not participate in education or training were 3X more likely to re-offend
Cost

- Costs of not doing so-economic as well as societal
- Education/training may equate into employment-employment equates into lower recidivism rates
- Annual cost of housing an inmate in NE-average $32,000-under age 19 $67,000

Possible Accommodations

- Access to diagnostic assessments to allow for proper response
- Special teaching strategies (Special Ed teacher/consult/partner w/Dept of Ed)
- Individualized approach-proven to work with dyslexia
- Provide more time to test, provide scribe or reader (GED)
Accessible Rooms and Communication for Inmates

- Ensure design is in line with accessibility standards (same features as other cells of similar classification level-dispersed throughout facility)
- Program and work assignments should be in line with Housing Unit assignment
- Sign Language Interpreters (effective communication standard) - Remote sign language Interpreters
- Hearing Aids, Braille, Large print materials in Library
- Interface with your Facility Maintenance staff

Medical Treatment of Inmates

- Interface with Medical staff
- Process to identify needs of the disabled inmate
- Who provides assistive devices and what standard is applied ex: prosthetic standard (shoes, appropriate activity level)
- Special diets/Canteen products (ex: sugar free foods for diabetics)
Post Traumatic Stress Disorder

- National Center for PTSD estimates 30 percent of men and women who spent time in a war zone experience PTSD—women twice as likely
- Corrections tends to hire military staff
- Symptoms—intrusive thoughts, avoidance of situations associated with the trauma, (inmates) general numbness, detachment (detail)
- Symptoms usually begin from 3-6 months—some cases years can pass before symptoms arise

EEOC Trends in Inmate Requests

- **Diabetes**—timeliness of meals, appropriate shoes, glucose testing (how, when, where)
- **Continuity of Meds**—transfer from one facility to another and meds change
- **Work Assignments**—accessible transportation, location
- **Effective Communication**—staff may not believe an inmate cannot hear, consider education level, assumptions of reading lips, extra time for use of TTY (video)
Inmate Trends (cont)

- **TTY**-availability, extra time, keyboarding ability, video younger inmates electronically savvy
- **Hygiene**-extra time in shower, (elderly) access, push button water controls
- **Disability** - Occurred during act of crime-never learned how to deal with disability prior to incarceration, physical therapy/mental health issue

Size of Television - deaf inmates who require closed captioning (13” min.)
- **Service Animals** - allow for inmate to be more self sufficient, what are the concerns?
- **Aging population** – medical care, access to yard, work assignments,
- **Probation/parolees** – plea agreements or house detentions in alternative format
Contact Information

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