

Overview of Disabilities

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Americans with Disabilities Act

- Prohibits discrimination and guarantees that people with disabilities have equal opportunities.
- Title II (42 U.S.C. section 12131 et seq.) applies to “public entities”.
- “No qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” (42 U.S.C. section 12132)

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ADA Terms Defined

- **Disability** – A physical or mental impairment that substantially limits one or more of the major life activities.
- **Major Life Activity** – A basic activity or function performed by the average person without difficulty such as caring for one's self, or performing manual tasks, such as seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. Also includes limitations with major bodily functions.

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ADA Continued

The ADA favors broad coverage

- Disabled persons include those with either:
 - (1) a record of impairment or
 - (2) who are perceived as having an impairment, without regard to any ameliorative effects of mitigation measures (e.g. medical equipment, hearing aids, mobility devices).

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Disability Coverage under the Armstrong Remedial Plan

“Equal access to parole proceedings shall be made available to inmates/parolees with qualified disabilities, which include, but are not limited to the following:

- Verified **physical disabilities**, whether or not the disability impacts placement consistent with the Disability Placement Program (DPP).
- Identified **developmental disabilities** consistent with the Developmental Disability Program (DDP).
- **Mental health needs**, which require participation in the MHSDS, regardless of the level of care.
- **Learning Disabilities**. While CDCR is not required to verify learning disabilities, CDCR does recognize documentation in the C-file that verifies a learning disability. A reading score of 4.0 or lower may also be reflective of a learning disability.”

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BPH Hearing – Reasonable Accommodation

What does it mean to provide reasonable accommodations at BPH hearings?

- Physical access to the hearing room
- Ability to participate in the hearing to the best of ability
- Effective Communication
- Assistance for hearing preparation tailored to the inmate's abilities

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Inmate Disabilities

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What is a Vision Impairment?

- Vision impairment can range from blindness to needing glasses.
 - For CDCR's purposes, vision impairment means the inmate is unable to see or read without accommodation.
- BPH provides vision-related assistive devices in the hearing rooms.

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Vision Impairments – CDCR Accommodations

Getting around the prison

- Typically housed in same prisons
- May be issued white canes/vests
- ADA Worker Program (*previously Inmate Disability Assistance Program*)

Assistive Devices available in law libraries and upon request

- CDCR may enlarge print materials, provide audio books or recordings, or use computer Text to Talk to read documents to inmates.
- Libraries include zoom text technology, sheet magnifiers, and hand magnifiers

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Issues to Consider

- Inmate will likely need assistance with reading and writing.
- Inmate may not be able to participate fully in education, vocation, or work assignments.
- Inmate may need assistance going to self-help programming and may be unable to read posters advertising new programs.
- Inmate will need assistance with Olsen Review.
- Disciplinary Process – Disability should be taken into account, when relevant.
 - For example, a blind inmate may not be able to see a boundary line when cited for going out of bounds.

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What is a hearing impairment?

- Hearing impairment can range from hard of hearing to deaf.
- Persons are considered deaf if their hearing loss is such that they are unable to understand speech and must rely on vision for communication.

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Hearing Impairments – CDCR Accommodations

Getting around the prison

- Typically housed in same prisons
- May be issued identifying vests
- Modified Procedures for Verbal Announcements
 - Flickering Lights
 - Door-to-Door Notifications

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Hearing Impairments – CDCR Accommodations

Help with communication may include:

- Sign Language Interpreters (SLI)
 - American Sign Language (ASL)
 - Contracted video interpreters may be available in other languages
- Written Language
- Lip Reading
- Assistive Listening Devices
 - Hearing Aids
 - Pocket Talkers

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Sign Language – Preferred Method of Communication

- **Sign Language Interpretation is the preferred method of communication for a hearing with a deaf inmate.**
 - BPH has a contract for ASL interpreters.
 - Sign Exact English or Other Language SLIs may be made available as needed, but need to contact BPH as soon as possible.
- Written notes are the least preferred method of communication and shall only be used as the sole source of communication in a hearing as a last resort, or at the inmate's request.
 - When written notes are used, it is essential to ensure an inmate's reading/writing level is sufficient to allow for written notes.
 - If written notes are used for communication between the inmate and hearing panel, they must be maintained for the record.

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Issues to Consider

- Assistive Listening Devices may not be working properly
- Inmate may not know American Sign Language, or may only know a modified “slang” version of sign language.
- Inmate may have an awkward writing style, as if writing in a foreign language.
- Inmate may have limited access to programs/services on account of his/her disability.
- Disciplinary Process – Disability should be taken into account, when relevant.
 - For example, a deaf inmate may not respond to a verbal instruction from a correctional officer.

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What is mobility impairment?

- Mobility impairment includes any limitations in transporting oneself.
 - May include use of an assistive device, such as a wheelchair, walker, or cane.
- Review CDCR Form 7410 Comprehensive Accommodation Chrono for information regarding your client’s mobility limitations

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Mobility Impairment – CDCR Accommodations

- Health Care Appliances
 - May include wheelchairs, canes, walkers, special shoes, and identifying vests
- Housing Accommodations
 - May include wheelchair-accessible cells, toilets, and showers; ramps and elevators; grab bars; lower bunks; lower tier housing; extra mattresses
- Path of Travel
 - CDCR may need to make modifications to the path of travel for the inmate to travel to various locations in the prison

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Issues to Consider

- Inmates may not be able to participate fully in vocation or work assignments.
- May need assistance getting around to self-help programs and other locations.
 - ADA Worker Program
- Disciplinary Process – Disability should be taken into account, when relevant.
 - For example, an inmate with mobility limitations will likely not be able to “get down” during an alarm.

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What is a Medical Impairment?

- Medical impairments include any physiological disorder or condition affecting one or more systems of the human body.
- Inmates with medical impairments can range from requiring 24-hour nursing care to requiring frequent or routine medical appointments.

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Medical Impairments – CDCR Specialized Medical Housing

- Inmates with medical impairments will be triaged to determine whether specialized medical housing is necessary
- Specialized medical housing may include:
 - General Acute Care Hospital (GACH)
 - Community Hospital
 - Correctional Treatment Center (CTC)
 - Outpatient Housing Unit (OHU)
 - Hospice/Palliative Care

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Issues to Consider

- Inmates in medical facilities are primarily treated as medical patients, even if they display symptoms of other disabilities.
 - For example, inmates with Alzheimer's or dementia who are being treated in a medical facility may not also be included in the Developmental Disability Program.
- Inmates in medical housing may have limited access to programs/services.

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Issues to Consider

- If in a general population setting, inmate may be limited in the types of programming he or she can participate in.
 - For example, inmate may need accommodations to work schedule or duties to obtain treatment or medications.
 - If inmate's condition is worsening, inmate may become unable to program
- Disciplinary Process – Disability should be taken into account, when relevant.
 - For example, an inmate with declining health may be cited for failure to report to work or other assignment if he hasn't yet received a medical restriction.

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What is a Mental Health Impairment?

- The ADA defines “mental impairment” as any mental or psychological disorder, such as emotional or mental illness.
- CDCR provides mental health treatment in accordance with its **Mental Health Services Delivery System (MHSDS)**.

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Mental Health Services Delivery System

Under the MHSDS, treatment and monitoring is required:

- For inmates demonstrating current symptoms of one of ten specified mental illness diagnoses *OR*
- If the inmate requires treatment as a “medical necessity,” meaning the inmate exhibits signs or symptoms of any mental disorder that causes significant disability or dysfunction.

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Mental Health Services Delivery System

Correctional Clinical Case Management System (CCCMS)

Enhanced Outpatient Program (EOP)

Mental Health Crisis Bed (MHCB)

Intermediate Care Facility (ICF)

Acute

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MHSDS Inmates and Programming

Due to weekly group treatment and programming requirements, inmates in EOP or higher levels of care may but are not required to have work assignments.

- **The mental health program is generally the programming assignment.**
- This means one cannot expect the same types of programming options and accomplishments for mental health inmates vs. general population

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MHSDS Inmates and Programming

- Mental Health programs are more focused on mental health issues than traditional self-help courses
 - **Group Therapy** courses often focus on understanding and dealing with mental illnesses.
 - **Self-help** courses generally focus on better understanding criminal actions, dealing with anger, victim awareness, etc.
- There may or may not be chronos in the c-file from mental health staff documenting the programs completed.
 - Ask the inmate and clarify this with the panel.

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Issues to Consider

- If your client is on suicide watch or suicide precaution (generally housed in MHCB), he or she may or may not be available to meet with you, depending on current condition.
 - You should speak with clinical staff to determine your client's current condition.
 - You may need to set up another time to meet with your client.
- Mental illnesses generally have no cure. Treatment may relieve symptoms.
- Inmate may have limited access to program/services on account of his/her MH programming.
- Disciplinary Process – Disability should be taken into account, when relevant.
 - Example: if conduct was related to inability to access medications or medications were not properly working

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What is a Developmental Disability?

- A person with a developmental disability has low cognitive functioning and substantial limitation in adaptive functioning.
- Adaptive functioning refers to a person's ability to perform activities of daily living and cope with everyday interactions and events.
 - Adaptive Functioning Deficits related to: communication, academic, self-care, socialization, self-advocacy/ use of resources, work, health and safety, self-direction, leisure
- Examples of developmental disabilities include autism, intellectual disability, and dementia

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Developmental Disability

Potential Characteristics of a Person with Developmental Disability:

- Communication below age level
- Reasoning is more concrete than abstract
- Short attention span and memory
- Inability to retain information
- Difficulty with simple tasks
- Difficulty with multi-step questions or instructions
- Does not understand the consequences of actions
- Exhibits behaviors that may be mistaken for noncompliance
- Focuses on the immediate/short term
- Immature social relationships
- Overly compliant and desire to please, e.g. may provide answers to questions he/she does not remember or understand
- Vulnerable to exploitation

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Designated DDP Housing

Inmates in the DDP are primarily housed within DDP-designated institutions.

- Housing in a DDP unit does not mean the inmate is getting additional programming and treatment.
- Nor does it mean the inmate is being excluded from programming available to the rest of the prison population.
- Instead, housing inmates in a DDP unit enables increased staff support with activities of daily living and helps minimize victimization concerns.

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Developmental Disability

- The “prescription” for adaptive services is provided by a clinician on the CDC Form 128C-2 (located in the c-file) and lists all of the adaptive support services that CDCR staff need to provide to the inmate.
- The level and type of adaptive support services needed will vary by individual regardless of DDP classification.
- Staff should be proactive in offering assistance because some inmates may not ask for it. Staff should be monitoring for victimization concerns.

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Issues to Consider

- Inmate may struggle with remembering or understanding programming
 - For example, does the inmate understand the 12 Steps of a 12-Step program?
- Disciplinary Process – Disability should be taken into account, when relevant.
 - Example: if conduct was related to inability to understand how to comply with an officer's order.
- Reminder:
 - If you feel like your client's circumstances have changed, e.g. he/she may have dementia, contact the institution before the hearing so that he/she can be evaluated for any disability or limitation and make sure to put your observations/referral on the record on the day of the hearing.

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Learning Disorders

- A learning disorder is a cognitive disorder that affects the ability of persons with normal intellect to learn academic and social information.
- Inmates may be considered potentially learning disabled if they:
 - Have a Test of Adult Basic Education (TABE) score of 4.0 or below; or
 - Self-identify as having a learning disorder

Reminder: CDCR does not test inmates for learning disabilities; however, CDCR may verify past diagnoses of learning disabilities.

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Issues to Consider

- A learning disability may impede an inmate's ability to advance in educational programs.
- Lack of progress in education could make it difficult to gain admission to vocational or PIA programming.

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Speech and Language Disorders

- Speech Disorders include:
 - Stuttering
 - Articulation – Difficulty forming sounds & stringing sounds together, substituting one sound for another, omitting a sound, etc.
 - Voice Disorders – Inappropriate pitch, loudness, or quality
- Language Disorders include:
 - Delayed Language – delayed development of vocabulary and grammar
 - Aphasia – The loss of speech and language abilities resulting from stroke or head injury

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Foreign Language Speaker

- Many inmates do not speak English at all or English is their second language and need to be able to effectively communicate in the parole proceedings.

Issues to Consider:

- Inmates who speak English as a second language may forget some of their English skills when faced with the stress of a hearing.
- Inmates may need help reviewing documents, which can be done with use of a telephonic interpreter service.

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Programming Issues for ADA Inmates

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Programming

- An inmate with disabilities may not have full access to programming.
 - E.g., physical limitations, workplace safety concerns, medical placement, and educational requirements
- An inmate with disabilities may have spent considerable time in a program, but may not be able to retain and articulate information that he learned from his groups.
 - E.g., inmate is unable to achieve GED, inmate cannot articulate the 12-Steps of AA/NA

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Programming

- NOTE: The Armstrong Revised Permanent Injunction provides that the Board “shall not recommend that prisoners participate in programs that are unavailable to them by reason of their disabilities and shall not rely on the failure of prisoners to participate in programs not available to them by reason of their disabilities as a factor supporting denial of a parole date or a multi-year denial.”

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Disciplinary Process for MHSDS and DDP Inmates

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Disciplinary Clinical Evaluations for Inmates with Mental Health or Developmental Disabilities

Before adjudication of a Rules Violations Report (115), a mental health clinician will write a mental health evaluation (CDCR 115 MH-A) for the following inmates:

- Mental Health - **EOP, MHCB, Acute Psychiatric, Intermediate level of care.**
- Mental Health - **CCCMS** and the inmate has been charged with a **Division A, B, or C offense**, or an offense which could result in a **SHU term**.
- Any inmate who exhibits **bizarre or unusual behavior**.
- **Developmental Disability Program** - DD1, DD2, or DD3.
- Act of **Indecent Exposure** or **Sexual Disorderly Conduct**.

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115 MH-A (Mental Health)

In cases where inmate has a mental illness, the clinician will assess:

- If there are any mental health factors that would make it difficult for the inmate to understand the disciplinary process or represent his/her interests that would indicate a need for a staff assistant. (CCCMS)
- Whether the inmate's behavior was so strongly influenced by symptoms of mental illness that he/she would be better served by documenting behavior in alternate manner. If so, a nexus must be established.
- Is there evidence to suggest that mental illness contributed to the behavior that led to the RVR? If so, establish a nexus.
- If found guilty, what mental health factors should be considered in assessing the penalty.

The hearing officer is not bound by the clinician's recommendations, but is required to take them into consideration prior to ruling on the 115.

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115 MH-A (Developmental Disability)

When the inmate has a developmental disability/cognitive or adaptive functioning deficit, the clinician will assess:

- Whether the inmate's behavior was so strongly influenced by symptoms of developmental disability that inmate would be better served by documenting this behavior in alternate manner. If so, a nexus must be established.
- Is there evidence to suggest that his/her developmental disability/cognitive functioning deficits contributed to the behavior that led to the RVR? If so, establish a nexus.
- If found guilty, what developmental disability factors should be considered in assessing the penalty.
- Does the inmate exhibit on-going behavior leading to disciplinary infractions related to developmental disability. If so, refer to clinician to assess cause and treatment.

The hearing officer is not bound by the clinician's recommendations, but is required to take them into consideration prior to ruling on the 115.

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RVR Exclusionary Criteria

Inmates shall not be issued a 115 if:

- The behavior occurred in connection with a cell extraction for the administration of **involuntary medication**.
- The behavior occurred in connection with a **cell extraction for transfer** of the inmate to a mental health inpatient or between mental health inpatient units.
- The behavior occurred in connection with being **placed in mental health restraints** and/or seclusion.
- The behavior is determined to be an act of **self-mutilation or attempted suicide**.

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Staff Assistance

- A staff assistant should be present for all hearings for inmates with developmental disabilities.
- Use the staff assistant as a tool for communication.
 - The staff assistant may have different techniques or a fresh approach in explaining a complex concept.

Reminder: It is YOUR ROLE to advocate for your client if your client does not appear to understand, regardless of whether a staff assistant is present.

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Additional Accommodations

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Attorney as Accommodation

For inmates with specified disabilities, the attorney is the accommodation, and cannot be waived.

- **Mandatory Attorney Appointment:**
 - **Mental Health** - All inmates in the EOP, ICF/Acute, or MHCB level of care.
 - **Developmental** - All inmates in the Developmental Disability Program.
 - **Learning** – All inmates with a TABE score (overall or reading) of 4.0 or below.
- **Presumptive Attorney Appointments:**
 - **Mental Health** – CCCMS level of care

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Attorney as Accommodation

You are in the driver's seat for ensuring your client's disability is adequately addressed throughout the hearing process

- 1) You need to provide accommodations
 - Speak slowly, assist in reviewing documents, etc.
- 2) You need to ensure BPH provides accommodations
 - Were all of your client's pre-hearing and at-hearing needs met?
 - Did BPH provide all necessary reasonable accommodations for your client's disabilities?
- 3) You need to be accommodating (aka flexible)
 - The way you prepare a case and represent a client may have to be altered when representing a client with disabilities.

Review Best Practices Handout

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Waivers, Stipulations, Postponements and Continuances

Avoid Multiple Delays:

- Life inmates have a right to a timely hearing.
- CDCR has an aging lifer population as well as a significant population of inmates with mental illnesses or developmental disabilities
- Attorneys will encounter inmates who are difficult to represent due to their disability.

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Final Thoughts

- You will encounter difficult cases.
- Give yourself plenty of time to prepare for the cases.
- Don't be hesitant to ask questions or interject.
- Do the best you can with difficult situations.
- Contact BPH with your concerns.
- BPH places great importance on giving all inmates and parolees timely hearings.
- BPH places great importance on accommodating your client's participation in a hearing, and establishing effective communication to the best of your client's abilities.

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Relevant Resources

- *Armstrong I* Remedial Plan – CDCR's plan for most disabilities
- *Clark* Remedial Plan – CDCR's plan for inmates with developmental disabilities
- *Armstrong II* Remedial Plan – BPH's plan for all ADA inmates
- CDCR Forms
 - CDCR 128-C2, Developmental Disability Program Screening Results
 - CDCR 1824, Reasonable Modification or Accommodation Request
 - CDCR 7385, Authorization for Release of Medical Information
 - CDCR 7410, Comprehensive Accommodation Chrono
- BPH Forms
 - BPH 1073, Notice and Request for Assistance at Parole Proceedings
 - BPH 1074, Request for Reasonable Accommodation – Grievance Process
- Foreign Language Interpreter – Telephonic Services Numbers
- ADA Codes (DECS Codes) Handout
- CDCR Armstrong Coordinators contact information
- Best Practices for Representing Inmates with Disabilities

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Questions?

Related to Accommodations - Contact:

- BPH ADA Compliance Unit, BPH.ADAUnit@cdcr.ca.gov

Legal Questions - Contact:

- Heather McCray, Heather.mccray@cdcr.ca.gov
- Norma Loza, Norma.Loza@cdcr.ca.gov
- Marcus Bole, Marcus.Bole@cdcr.ca.gov
- Jim Logsdon, Jim.Logsdon@cdcr.ca.gov