



Department of Corrections and Rehabilitation NOTICE OF CHANGE TO REGULATIONS

Sections:	NCR Number:	Publication Date:	Effective Date:
3000, 3004, 3031, 3040, 3041, 3041.1, 3044.1, 3120, 3192, 3220, 3269, 3269.5, 3303, 3312.1, 3318, 3335.5, 3344, 3369.5, 3369.6, 3369.7, 3369.8, 3369.9, 3369.10, 3369.11, 3369.12, 3369.13, 3370, 3376.2	24-03	April 26, 2024	To Be Determined

INSTITUTION POSTING AND CERTIFICATION REQUIRED

This Notice announces the proposed amendment of Sections 3000, 3004, 3031, 3040, 3041, 3041.1, 3044.1, 3120, 3192, 3220, 3269, 3303, 3318, 3344, 3341.3, and 3370; and the adoption of Sections 3269.5, 3312.1, 3335.5, 3369.5, 3369.6, 3369.7, 3369.8, 3369.9, 3369.10, 3369.11, 3369.12, 3369.13, and 3376.2 in the California Code of Regulations (CCR), Title 15, Crime Prevention and Corrections, Division 3, regarding the Developmental Disability Program.

PUBLIC COMMENT PERIOD

The public comment period will close on **June 12, 2024**. Any person may submit written comments about the proposed regulations by mail to the California Department of Corrections and Rehabilitation (CDCR), Regulation and Policy Management Branch (RPMB), P.O. Box 942883, Sacramento, CA 94283-0001, or by e-mail to RPMB@cdcr.ca.gov. All written comments must be received or postmarked no later than **June 12, 2024**.

PUBLIC HEARING INFORMATION

A public hearing regarding these proposed regulations will be held on **June 12, 2024**, from 10:00 a.m. to 11:00 a.m. in Conference Room 150, located at 1515 S Street, Sacramento, CA 95811. The purpose of the hearing is to receive comments about these proposed regulations. It is not a forum to debate the proposed regulations. No decision regarding the permanent adoption of these regulations will be rendered at this hearing. Written comments submitted during the prescribed comment period are given the same significance and weight as oral comments presented at the hearing. This hearing site is accessible to the mobility impaired.

POSTING

This Notice shall be posted immediately upon receipt at locations accessible to inmates, parolees, and employees in each department facility and field office not later than five calendar days after receipt. Also, institutions and facilities shall make this Notice available for review by inmates in segregated housing who do not have access to the posted copies and shall distribute it to inmate law libraries and advisory councils. CDCR Form 621-A (Rev. 05/19), Certification of Posting, shall be returned to RPMB by mail or email. See Department Operations Manual Section 12010.6.7 for posting and certification of posting procedures.

CONTACT PERSON

Inquiries regarding this Notice should be directed to S. Pollock, by mail to California Department of Corrections and Rehabilitation, RPMB, P.O. Box 942883, Sacramento, CA 94283-0001, by telephone at (916) 445-2308, or e-mail to RPMB@cdcr.ca.gov. Inquiries regarding the subject matter of these regulations should be directed to Tim Fleshman, Division of Adult Institutions, at (916) 322-2315.

Original signed by:

TAMMY FOSS
Undersecretary, Operations
California Department of Corrections and Rehabilitation

Attachments

NOTICE OF PROPOSED REGULATIONS
California Code of Regulations
Title 15, Crime Prevention and Corrections
Department of Corrections and Rehabilitation

NOTICE IS HEREBY GIVEN that the Secretary of the California Department of Corrections and Rehabilitation (CDCR or department), proposes to amend Sections 3000, 3004, 3031, 3040, 3041, 3041.1, 3044.1, 3120, 3192, 3220, 3269, 3303, 3318, 3344, 3341.3, and 3370; and adopt new Sections 3269.5, 3312.1, 3335.5, 3369.5, 3369.6, 3369.7, 3369.8, 3369.9, 3369.10, 3369.11, 3369.12, 3369.13, and 3376.2 in Title 15, Division 3, regarding the Developmental Disability Program.

PUBLIC COMMENT PERIOD

The public comment period begins on **April 26, 2024**, and closes on **June 12, 2024**. Any person may submit written comments by mail addressed to the primary contact person listed below, or by email to rmb@cdcr.ca.gov, before the close of the comment period. For questions regarding the subject matter of the regulations, call the program contact person listed below.

CONTACT PERSONS

Primary Contact

S. Pollock
Telephone: 916 445-2308
Regulation and Policy
Management Branch
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Back-Up

Y. Sun
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Program Contact

Tim Fleshman
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Division of Adult Institutions
P.O. Box 942883
Sacramento, CA 94283-0001

PUBLIC HEARING

Date and Time: **June 12, 2024 – 10:00 a.m. to 11:00 a.m.**
Place: Department of Corrections and Rehabilitation
Conference Room 150
1515 S Street – North Building
Sacramento, CA 95811

AUTHORITY AND REFERENCE

Government Code Section 12838.5 provides that commencing July 1, 2005, CDCR succeeds to, and is vested with, all the powers, functions, duties, responsibilities, obligations, liabilities, and jurisdiction of abolished predecessor entities, such as Department of Corrections, Department of the Youth Authority, and Board of Corrections.

Penal Code (PC) Section 5000 provides that commencing July 1, 2005, any reference to Department of Corrections in this or any code, refers to the CDCR, Division of Adult Operations. **PC Section 5050** provides that commencing July 1, 2005, any reference to the Director of Corrections in this or any other code, refers to the Secretary of the CDCR. As of that date, the office of the Director of Corrections is abolished.

PC Section 5054 provides that commencing July 1, 2005, the supervision, management, and control of the State prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of persons confined therein are vested in the Secretary of the CDCR. **PC Section 5055** provides that commencing July 1, 2005, all powers and duties previously granted to and imposed upon the Department of Corrections shall be exercised by the Secretary of the CDCR. **PC Section 5058** authorizes the Director to prescribe and amend rules and regulations for the administration of prisons and for the administration of the parole of persons. **PC Section 5058.3** authorizes the Director to certify in a written statement filed with Office of Administrative Law that operational needs of the department require adoption, amendment, or repeal of regulation on an emergency basis.

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

Currently, the Developmental Disability Program (DDP) is described in the *Clark* Remedial Plan, which is the result of the *Clark vs. California* settlement order and various agreements between the department and plaintiffs. This remedial plan concerns the care and treatment of inmates with developmental disabilities. The proposed regulatory action provides for equal opportunities for developmentally disabled inmates and will bring the department into compliance with the *Clark v. California* settlement order by establishing policies for immediate and ongoing compliance with provisions of the Americans with Disabilities Act (ADA). Revisions provide for the identification, classification, housing, protection, and nondiscrimination of inmates in the DDP. Inmates will be assessed to determine their DDP designation level, and they will be provided with adaptive support services commensurate with their adaptive support needs. No qualified inmate with a disability, because of that disability, shall be subjected to discrimination or be denied the benefits of programs, services, or activities of the department.

This action will:

- Provide for new definitions in section 3000 related to the Developmental Disability Program (DDP).
- Establish that library staff shall provide orientation to inmates in the DDP for the law library and other library services.
- Require that staff meet privately with inmates in the DDP with potential victimization concerns, to query for possible victimization.
- Incorporate by reference, into Title 15, Division 3, four new CDCR Forms: CDCR Form 128C-2 (Rev. 01/24), Developmental Disability Program Adaptive Supports Screening Results; CDCR Form 200-A (01/24), Developmental Disability Program Adaptive Support Log – Housing Unit; CDCR Form 200-B (01/24), Developmental Disability Program Adaptive Support Log – Work/School; and CDCR Form 0201 (01/24), Condemned Incarcerated Persons - Waiver of Developmental Disability Program Screening and Inclusion.
- Establish new section 3269.5 for DDP Housing, which will take into account an inmate in the DDP's safety when making housing determinations. Inmates in the DDP shall not be housed with inmates with a history of sexual or predatory behavior.
- Establish new section 3312.1, Disciplinary Methods for Inmates in the DDP, which requires staff to take into consideration the inmate in the DDP's adaptive support needs as they relate to the misconduct.
- Add language regarding the Staff Assistant (SA), which is mandatory for all inmates in the DDP. New language specifies the duties that the SA shall assist the inmate in the DDP with.
- Establish new section 3335.1, Restricted Housing for Inmates in the DDP, which provides that inmates in the DDP shall be provided their adaptive support services regardless of their housing setting.
- Establish new Article 9.1, Developmental Disability Program, and sections 3369.5 through 3369.13, which set forth provisions regarding the DDP such as: general policy, DDP categories, screening and processing, adaptive support services, interdisciplinary support team, work and program assignments, and academic assignments.
- Establish new section 3376.2, Classification of Inmates in the DDP, ensuring that inmates in the DDP are not exposed to a significant risk of harm, abuse, or harassment.

DOCUMENTS INCORPORATED BY REFERENCE

CDCR Form 128C-2 (Rev. 01/24), Developmental Disability Program Adaptive Supports Screening Results.

CDCR Form 200-A (01/24), Developmental Disability Program Adaptive Support Log – Housing Unit.

CDCR Form 200-B (01/24), Developmental Disability Program Adaptive Support Log – Work/School.

CDCR Form 0201 (01/24), Condemned Incarcerated Persons - Waiver of Developmental Disability Program Screening and Inclusion.

SPECIFIC BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS

The proposed regulatory amendments will provide for equity, inclusivity, and nondiscrimination of developmentally disabled inmates. Revisions to statewide standardized practices will allow for inmates in the Developmental Disability Program (DDP) to have equal access and opportunity to participate in programs, services, and activities within the department. By providing inmates in the DDP with their adaptive support needs, it will help provide an even playing field so that they are able to function and perform to the best of their ability. For inmates in the DDP, safety will be enhanced by ensuring their appropriate housing, and that they are monitored for any victimization concerns. Lastly, the proposed regulations will provide compliance with existing court orders and evolving ADA law.

EVALUATION OF INCONSISTENCY/INCOMPATIBILITY WITH EXISTING LAWS AND REGULATIONS

Pursuant to Government Code 11346.5(a)(3)(D), the department has determined the proposed regulations are not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the department has concluded that these are the only regulations that concern the Developmental Disability Program.

LOCAL MANDATES

This action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement of costs or savings pursuant to Government Code Sections 17500 - 17630.

FISCAL IMPACT STATEMENT

- | | |
|--|-------------|
| • Cost or savings to any state agency: | <i>None</i> |
| • Cost to any local agency or school district that is required to be reimbursed: | <i>None</i> |
| • Other nondiscretionary cost or savings imposed on local agencies: | <i>None</i> |
| • Cost or savings in federal funding to the state: | <i>None</i> |

EFFECT ON HOUSING COSTS

The department has made an initial determination that the proposed action will have no significant effect on housing costs.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

The department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS

The department has made an initial determination that the proposed regulations will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, because the proposed regulations place no obligations or requirements on any business.

EFFECT ON SMALL BUSINESSES

The department has determined that the proposed regulations will not affect small businesses. This action has no significant adverse economic impact on small business because they place no obligations or requirements on any business.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The department has determined that the proposed regulation will have no effect on the creation of new, or the elimination of existing, jobs or businesses within California, or effect the expansion of businesses currently doing business in California. The department has determined that the proposed regulation will have no effect on the state's environment or worker safety. The welfare of CDCR inmates in the DDP may benefit by allowing for them to be treated with equity, inclusivity, and nondiscrimination, and protecting them from harassment or discrimination, which will preserve their dignity and self-esteem.

CONSIDERATION OF ALTERNATIVES

The department must determine that no reasonable alternative considered by the department or that has otherwise been identified and brought to the attention of the department would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed regulatory action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law. Interested persons are invited to present statements or arguments with respect to any alternatives to the changes proposed at the scheduled hearing or during the written comment period.

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS

The department has prepared and will make available the text and the Initial Statement of Reasons (ISOR) of the proposed regulations. The rulemaking file for this regulatory action, which contains those items and all information on which the proposal is based (i.e., rulemaking file) is available to the public upon request directed to the department's contact person. The proposed text, ISOR, and Notice of Proposed Regulations will also be made available on the department's website: www.cdcr.ca.gov.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Following its preparation, a copy of the Final Statement of Reasons may be obtained from the department's contact person.

AVAILABILITY OF CHANGES TO PROPOSED TEXT

After considering all timely and relevant comments received, the department may adopt the proposed regulations substantially as described in this Notice. If the department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text, with the changes clearly indicated, available to the public for at least 15 days before the department adopts, amends, or repeals the regulations as revised. Requests for copies of any modified regulation text should be directed to the contact person indicated in this Notice. The department will accept written comments on the modified regulations for at least 15 days after the date on which they are made available.

TEXT OF PROPOSED REGULATIONS

In the following, ~~strikethrough~~ indicates deleted text and underline indicates added, amended, or moved text.

California Code of Regulations, Title 15, Division 3, Adult Institutions, Programs and Parole

Chapter 1. Rules and Regulations of Adult Operations and Programs

Article 1. Behavior

3000. Definitions.

[Section 3000 is amended to alphabetically merge the definitions below with those that exist in the regulations.]

Adaptive Functioning Deficits are cognitive impairments that impact the abilities necessary to care for oneself or to access programs, services, and activities in a correctional setting. Participants in the Developmental Disability Program (DDP) with adaptive functioning deficits require adaptive services to help them program effectively.

Adaptive Support Needs are needs a participant in the DDP may have that require adaptive support services to help them program effectively in the correctional setting. Specific adaptive support needs vary from person to person and are unique to each individual. They can include, but are not limited to: prompts to perform self-care or activities of daily living; assistance with reading or writing; the use of slower or simple communication; and the need for staff to remind or explain rules and procedures.

Adaptive Support Services are services provided to inmates with low cognitive functioning (usually Intelligence Quotient [IQ] of 75 or below) and concurrent deficits or impairments in adaptive functioning, to help the inmate program effectively and safely in the correctional setting. Adaptive support services include, but are not limited to: monitoring, prompting, coaching, or assisting with activities of daily living.

Certificate of Attendance and Participation (CAP) is a certificate of educational completion that may be awarded to eligible inmates in the Developmental Disability Program (DDP) with severe cognitive disabilities who have not made educationally expected progress on formative, summative, and standardized educational assessments pertaining to their enrolled classes. The CAP is not an academic credential. For purposes of work and program assignments within the department, it validates that the inmate in the DDP has satisfactorily completed a prescribed high school alternative course of study for employment applications, Department of Rehabilitation services, and graduation participation. A CAP may be approved by the Classification Committee on a case-by-case basis, if the inmate meets eligibility criteria as outlined in subsection 3369.13(e)(1).

Developmental Disability is defined as a disability that continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual, regardless of the age of onset. It includes intellectual disability, cerebral palsy, epilepsy, and autism. It also includes disabling conditions associated with mild or moderate memory deficits and also those found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability, but does not include other disabling conditions that are solely physical in nature.

Developmental Disability Program (DDP) is the department's plan, policies, and procedures to assure identification, classification, housing, protection, and nondiscrimination of inmates with developmental disabilities and those with cognitive and concurrent adaptive functioning deficits meeting the established inclusion criteria.

Disability is a physical, mental, cognitive, or developmental condition that impairs or limits one or more major life activities of a person. Major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, writing, communicating, interacting with others, working, and the operation of a major bodily function, including but not limited to digestive, bowel, and bladder control.

Out-to-Medical means an inmate is temporarily removed from their assigned institution for medical treatment.

Predatory Case Factors are factors that may place an inmate in the Developmental Disability Program at risk of injury or other serious harm if housed with an inmate with a history of predatory behavior, including manipulative behavior against an individual with a disability, especially when this behavior occurred while in custody.

Qualified Inmate with a Disability means an inmate with a disability, who with or without a reasonable accommodation, meets the essential eligibility requirements for participation in programs, services, or activities provided by the department. An inmate who cannot meet the essential eligibility requirements, even with a reasonable accommodation, is not considered qualified for the program, service, or activity.

Reasonable Accommodations are modifications to programs, services, or activities, or assistive devices provided, which make it possible for a qualified inmate with a disability to achieve equal access to the department's programs, services, or activities, without imposing an undue hardship on the department, or posing a direct threat to the health, safety, or security of the inmate, parolee, staff, institution, or anyone else.

Note: Authority cited: Sections 243(f)(4), 2717.3, 3000.03, 5058, 5058.3 and 1170.05, Penal Code; Section 10115.3(b), Public Contract Code; and Sections 4525(a), 4526 and 14837, Government Code. Reference: Sections 186.22, 243, 314, 530, 532, 600, 646.9, 653m, 832.5, 1170.05, 1203.8, 1389, 2080, 2081.5, 2600, 2601, 2700, 2717.1, 2717.6, 2932.5, 3003.5(a), 3020, 3450, 3550, 4570, 4576, 5009, 5050, 5054, 5068, 7000 et seq.

and 11191, Penal Code; Sections 1132.4 and 1132.8, Labor Code; Sections 10106, 10108, 10108.5, 10115, 10115.1, 10115.2, 10115.3 and 10127, Public Contract Code; and Section 999, Military and Veterans Code; Section 391, Code of Civil Procedure; Section 297.5, Family Code; Section 4512, Welfare and Institutions Code; Sections 8550, 8567, 12838 and 12838.7, Government Code; Governor's Prison Overcrowding State of Emergency Proclamation dated October 4, 2006; *In re Bittaker*, 55 Cal.App. 4th 1004, 64 Cal. Rptr. 2d 679; Section 11007, Health and Safety Code; *Madrid v. Cate* (U.S.D.C. N.D. Cal. C90-3094 TEH); *Sassman v. Brown* (E.D. Cal. 2015) 99 F.Supp.3d 1223; *Mitchell v. Cate*, USDC ED 2:08-CV-01196-TLN-EFB; *In re Garcia* (2012) 202 Cal.App.4th 892; *Quine v. Beard*, No. C 14-02726 JST; and *Clark v California* (2002) USDC-ND (No. C-96-1486-CRB); Americans with Disabilities Act, Public Law 101-336, July 26, 1990, 104 Stat. 328.

3004. Rights and Respect of Others.

[Subsections 3004(a) through (b) are unchanged.]

[Subsection 3004(c) is amended to read:]

(c) Inmates, parolees, and employees will not subject other persons to any form of discrimination because of race, religion, nationality, sex, political belief, age, ~~physical or mental handicap~~ disability, or other forms of discrimination prohibited by law.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; Americans with Disabilities Act, Public Law 101-336, July 26, 1990, 104 Stat. 328.

Article 2. State-Issued Clothing and Linen

3031. Neatness and Laundry Exchange.

[Subsection 3031(a) is amended to read:]

(a) Inmates shall be appropriately clothed at all times consistent with the specific unit, work or program activities, and as directed by staff. Inmate clothing shall be worn in the manner in which it was manufactured to be worn.

[New subsection 3031(b) is adopted to read:]

(b) Staff shall provide reminders, and assistance as necessary to inmates in the Developmental Disability Program (DDP), and monitor them to ensure they are wearing clean clothing, they have clean linens, and their laundry is being exchanged, if indicated on the inmate's automated CDCR Form 200-A (01/24), Developmental Disability Program Adaptive Support Log – Housing Unit, which is incorporated by reference, and is located in the Strategic Offender Management System (SOMS).

[Existing subsection 3031(b) is renumbered to (c) but is otherwise unchanged.]

~~(b)~~(c) Each inmate shall maintain issued clothing and linen as neat and clean as conditions permit. Weekly laundry exchange shall be provided on a one-for-one basis limited as follows:

- (1) Shirts or blouses, two.
- (2) Jeans or slacks, two.
- (3) Undershirts, three.
- (4) Undershorts or panties, three.
- (5) Sheets, two.
- (6) Pillow case, one.
- (7) Socks, three pairs.
- (8) Towels, two.

[New subsection 3031(d) is adopted to read:]

(d) Adjustments to the above limits shall be made on a case-by-case basis for inmates with special clothing needs, including those with medical or disability needs.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code. Clark v California (N.D.Cal. 2002) No. C-96-1486-CRB; In re Armstrong (N.D. Cal. 1998) No. C 94-02307 and Remedial Plan (amended January 3, 2001); Plata v. Newsom (N.D.Cal. 2001) No. C-01-1351-JST.

Article 3. Work and Education

3040. Participation.

[Subsection 3040(a) is amended to read:]

(a) It is the department's policy to ensure that all inmates, regardless of disability, are afforded equal access to participate in programs, services, and activities. Every ~~able-bodied~~ individual committed to the custody of the Secretary of the Department of Corrections and Rehabilitation, with the exception of those individuals meeting the criteria established in section 3044.1(d)(2)(B), is obligated to work as assigned by department staff and by personnel of other agencies to whom the inmate's custody and supervision may be delegated. Assignment may be up to a full day of work, education, other programs, or a combination of work, education, or other programs. Inmates shall not be denied an assignment solely on the basis of their disability as long as they, with or without a reasonable accommodation, meet the essential eligibility requirements for participation.

[Subsections 3040(b) through (e) are unchanged.]

[Subsection 3040(f) is amended to read:

(f) Any staff request for removal of an inmate from a program shall be submitted to the inmate's correctional counselor on a CDC General Chrono Form. The counselor shall

refer the request to a classification committee for consideration and action. If a request is for cause, defined as behavior that would result in loss of participation credit pursuant to section 3043.2(a), the inmate may be temporarily relieved of the position and denied pay (if a paid position), pending classification committee action. Inmates shall not be removed due to their disability if they are able to complete the essential functions of the job, with or without reasonable accommodation.

[Subsections 3040(g) through (l) are unchanged.]

Note: Authority cited: Sections 2700 and 5058, Penal Code. Reference: Section 1182, Labor Code; and Sections 502, 2933, 5054 and 5068, Penal Code.

3041. Performance.

[Subsection 3041(a) is unchanged.]

[Subsection 3041(b) is amended to read:]

(b) Inmates must report to their place of assignment at the time designated by the institution's schedule of activities and as instructed by their assignment supervisor. Inmates may not leave an assignment without permission to do so. Inmates in the DDP may require prompts or reminders to attend their assignments.

[Subsections 3041(c) through (e)(2) are unchanged.]

[New subsection 3041(f) is adopted to read:]

(f) Inmates shall be afforded a reasonable accommodation based on their identified disability for any work or program assignment, as long as the inmate does not meet the criteria for medically disabled under section 3044.1(d)(2)(B).

[New subsection 3041(g) is adopted to read:]

(g) For inmates in the Developmental Disability Program (DDP), evaluation for removal from a program assignment shall be done on a case-by-case basis as outlined in sections 3041.1(e), 3044.1(d)(2)(B), and 3376.2(e).

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; and Sections 2297, 2318, 2320 and 1798 et seq., Civil Code. Clark v California (2002) USDC-ND (No. C-96-1486-CRB); Americans with Disabilities Act, Public Law 101-336, July 26, 1990, 104 Stat. 328.

3041.1. Paid Inmate Work/Training Assignment Criteria.

[Subsections 3041.1(a) through (d) are unchanged.]

[New subsection 3041.1(e) is adopted to read:]

(e) An inmate's Developmental Disability Program (DDP) status may not be used as the sole basis to disqualify or remove an inmate from a position. An inmate in the DDP may be disqualified or removed on a case-by-case basis as outlined in sections 3044.1(d)(2)(B), and 3376.2(e). Consideration for disqualification or removal from a position shall take into account factors, including but not limited to: the inmate's ability to perform the essential functions of the program with or without a reasonable accommodation, the inmate's documented disciplinary behavior, or the inmate's documented refusal to work as directed.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code. Clark v California (2002) USDC-ND (No. C-96-1486-CRB); Americans with Disabilities Act, Public Law 101-336, July 26, 1990, 104 Stat. 328.

Article 3.4. Inmate Work and Privileges

3044.1. Special Assignments.

[Subsections 3044.1(a) through (d)(2)(A) are unchanged.]

[Subsection 3044.1(d)(2)(B) is amended to read:]

(B) Medically disabled. When an inmate is unable to participate in any ~~assigned work, academic, Career Technical Education program, or other such program activity~~ assigned work or program, even with reasonable accommodation, because of a medically determinable physical, or mental impairment that is expected to result in death or last six months or more, the classification committee shall place the inmate on medically disabled status. The inmate work group status shall be in accordance with section 3044(b)(1), Work Group A-1 and Privilege Group A, unless the inmate is assigned Work Group M in accordance with subsection 3044(b)(8).

[Subsections 3044.1(e) through (h) are unchanged.]

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2933, 2933.05, 2933.3, 2933.6, 5054 and 5068, Penal Code

Subchapter 2. Inmate Resources

Article 3. Confidentiality and Privacy

3120. Inmate Library Requirements.

[Subsections 3120(a) through (c) are unchanged.]

[New subsections 3120(d) through (g) are adopted to read:]

(d) Notwithstanding reasonable circumstances for delay, library staff shall provide orientation to inmates in the Developmental Disability Program (DDP) for Law Library and other library services within 30 calendar days of the inmate's arrival at an institution. Circumstances that may warrant delay include, but are not limited to: inmate refusal, modified programming at the institution, or situations that pose a threat or jeopardize the safety or security of the inmate, staff, the institution, or others.

(e) Staff shall ensure an inmate with a disability or an inmate in need of assistance with communication is provided the necessary assistance to access library services, including, but not limited to: reading; writing; scribing department, court, and Board of Parole Hearings forms or related documents; explaining department, court, and Board of Parole Hearings processes or documents; identifying research materials; and accessing electronic readers, assistive devices, and inmate assistants.

(f) Staff shall not provide legal advice or conduct legal research. For an inmate with a disability impacting their ability to communicate, staff shall assist, when necessary, with the completion of the letter to the court requesting assistance, due to the inmate's developmental disability.

(g) The letter to the court should include the inmate's claim that they have a disability that makes it difficult to read, write, or understand the process or legal material regarding the case.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2600, 2601 and 5054, Penal Code; Toussaint v. McCarthy, 801 F.2d 1080 (9th Cir. 1986); and Bounds v. Smith, 97 S.Ct. 1491 (1977), 430 U.S. 817. Clark v California (2002) USDC-ND (No. C-96-1486-CRB); Americans with Disabilities Act, Public Law 101-336, July 26, 1990, 104 Stat. 328.

Article 9. Personal Property and Religious Personal Property

3192. Possession and Exchange.

[Initial paragraph is numbered 3192(a) but is otherwise unchanged.]

(a) An inmate's right to inherit, own, sell or convey real and/or personal property does not include the right to possess such property within the institutions/facilities of the department. An inmate may not exchange, borrow, loan, give away or convey personal property to or from other inmates. Violation(s) of this rule may result in disciplinary action, and confiscation and/or disposal of the personal property.

[New subsections 3192(b) and (c) are adopted to read:]

(b) For inmates who are participants in the Developmental Disability Program (DDP) and identified with potential victimization concerns, staff are required to meet privately with the inmate and query for possible victimization concerns, including but not limited to theft or destruction of property, manipulation, pressuring, and undue influence regarding their property.

(c) Staff shall meet with the inmate privately, and as frequently as listed on their automated CDCR Form 200-A (01/24), Developmental Disability Program Adaptive Support Log - Housing Unit, which is incorporated by reference and is located within SOMS.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2601 and 5054, Penal Code. Clark v California (2002) USDC-ND (No. C-96-1486-CRB).

Subchapter 3. Inmate Activities

Article 2. Recreational and Physical Education Programs

3220. Recreational and Physical Education Program Participation.

[Subsection 3220(a) is amended to read:]

(a) All ~~Interested~~ inmates shall be provided an equal opportunity to participate in constructive recreational and physical education programs under safe and secure conditions, consistent with the inmate's custodial classification, work/ or training assignment, privilege group, and security requirements. Reasonable accommodations shall be afforded to inmates with disabilities to facilitate their participation in recreational and physical education programs.

[Subsections 3220(b) through (g) are unchanged.]

Note: Authority cited: section 5058, Penal Code. Reference: Sections 5010 and 5054, Penal Code; Americans with Disabilities Act, Public Law 101-336, July 26, 1990, 104 Stat. 328.

Subchapter 4. General Institution Regulations

Article 1.6. Inmate Housing

3269. Inmate Housing Assignments.

[Subsection 3269(a) is unchanged.]

[Subsection 3269(b) is unchanged but is shown for reference.]

(b) Upon arrival at an institution, facility, or Reception Center, a designated screening authority shall screen an inmate for an appropriate housing assignment in a private setting. The screening authority reviewing and approving an inmate's housing assignment shall evaluate all factors to be considered when completing the Initial Housing Review (IHR), including but not limited to:

[Subsections 3269(b)(1) through (19) are unchanged.]

[New subsection 3269(b)(20) is adopted to read:]

(20) Participation in the Developmental Disability Program.

[Subsections 3269(c) through (h) are unchanged.]

[Subsection 3269(i) is amended to read:]

(i) If an inmate refuses a housing assignment, the inmate shall be subject to the disciplinary process. Refusal to accept a housing assignment shall result in the issuance of a RVR for Conduct, subsection 3005(c), Refusing to Accept Assigned Housing, for the Specific Act of Willfully Resisting, Delaying, or Obstructing any Peace Officer in the performance of Duty (subsection 3323(f)(6)). Subsequent refusals shall result in additional disciplinary action. When the refusal involves an inmate in the DDP, staff shall follow the direction set forth in section 3312.1(b).

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; and *Quine v. Beard*, No. C 14-02726 JST.

[New section 3269.5 is adopted to read:]

3269.5. Developmental Disability Program Housing.

(a) Nothing in this section shall preclude staff from making informed and sound custody and classification decisions, especially when there may be circumstances that may place an inmate in the Developmental Disability Program (DDP) at risk.

(b) Inmates in the DDP shall be referred to a Classification and Parole Representative (C&PR) or Classification Staff Representative (CSR) for review and endorsement to a designated DDP institution or facility appropriate for the inmate's DDP designation (e.g., DD1, DD2, or DD3, as specified in section 3369.7), within 14 working days of designation or change in case factors, including change in DDP designation.

(c) If an inmate's DDP designation changes, the Mental Health Clinician that performed the inmate's assessment shall update the inmate's identified adaptive supports, as applicable, and the inmate shall be referred to the C&PR or CSR for review and endorsement to a designated DDP institution or facility appropriate for the inmate's new

DDP designation. Inmates with predatory case factors, as explained in section 3269.5(f), shall not be housed in DDP-designated housing areas unless the minimum exclusionary periods identified in subsection 3269.5(h) have been met.

(d) Custody or classification staff shall screen all inmates prior to being housed in a DDP-designated housing unit. During the intake process at receiving institutions, prior to housing inmates, custody staff are required to screen all inmates for single-cell status and compatibility as part of the Initial Housing Review (IHR). Classification staff shall review the IHR for single-cell status and housing restrictions during initial classification.

(e) In specialized housing areas (e.g., Restricted Housing Units, Enhanced Outpatient Program (EOP), Correctional Treatment Center (CTC), or Reception Centers), custody or classification staff shall screen potential inmates that may be considered for sharing a living area with an inmate in the DDP. Inmates with predatory case factors that have not met the established minimum exclusionary period outlined in subsection 3269.5(h), shall not be housed with inmates in the DDP with victimization concerns.

(f) Bed Assignments. The existence of predatory case factors precludes an inmate from being assigned to DDP-designated housing areas unless they have met the minimum exclusionary periods identified in subsection 3269.5(h). The following are predatory case factors that preclude an inmate from being assigned to DDP-designated housing areas unless minimum exclusionary periods have been met:

(1) Found guilty of an in-custody sexual offense, or an attempt of an in-custody sexual offense.

(2) New commitments with documented incident(s) of sexual offenses against individuals with a disability.

(3) Single-cell status due to in-cell violence.

(4) Documented in-custody conduct that demonstrates victimization or manipulative behavior against an individual with a disability, including when an inmate is found guilty of a Rules Violation Report (RVR) for any of the following charges against a person with a disability:

(A) Battery.

(B) Assault.

(C) Criminal Threats.

(D) Extortion.

(E) Stalking.

(F) Theft.

(g) Additional exclusionary factors for housing inmates in DDP housing may be determined on a case-by-case basis.

(h) The following chart provides the minimum exclusionary periods for predatory factors that are to be considered when housing other inmates with an inmate in the DDP:

<u>Predatory Case Factor</u>	<u>Minimum Exclusionary Period</u>
<u>Found guilty of an in-custody sexual offense, or an attempt (e.g., rape, forcible sodomy, oral copulation, sexual battery with aggravating factors, etc.).</u>	<u>Permanently excluded from DDP-designated housing and housing with an inmate in the DDP.</u>
<u>New commitments to CDCR with documented incident(s) of sexual offenses against individuals with a physical, mental, or developmental disability.</u>	<u>Excluded from DDP-designated housing and housing with an inmate in the DDP for five years from date of reception to CDCR.</u>
<u>Single-cell status due to in-cell violence.</u>	<u>Must be double-celled during the previous 2 years without in-cell violence.</u>
<u>Documented in-custody conduct (e.g., substantiated information in confidential C-File) that demonstrates victimization or manipulative behavior against an individual with a physical, mental, or developmental disability, including when an inmate is found guilty of an RVR for any of the following offenses against a person with a disability:</u> <ul style="list-style-type: none"> • <u>Battery</u> • <u>Assault</u> • <u>Criminal Threats</u> • <u>Extorting</u> • <u>Stalking</u> • <u>Theft</u> 	<u>Three years has passed from most recent date of documentation.</u> <u>Staff should use discretion and sound correctional judgement when determining appropriate housing for inmates in the DDP. Each decision made on the basis of this exclusionary factor shall be evaluated on a case-by-case basis. An inmate may have committed one of the listed offenses, but it may have not been against an individual with a disability, or the circumstances surrounding the violation may lead the reviewer to believe the offense was not predatory in nature.</u>

(i) Inmates, including those in the DDP, who have any of the identified predatory case factors specified in subsection 3269.5(f), and who have not met the established exclusionary period in subsection 3269.5(h), shall not:

(1) Be housed in a designated DDP building, unit, or wing.

(2) Share a non-DDP designated cell, bay, wing, or pod in a dorm with an inmate in the DDP that has victimization noted on their automated CDCR Form 128C-2 (Rev. 01/24), Developmental Disability Program Adaptive Supports Screening Results (Adaptive Support Form), located in SOMS, which is incorporated by reference.

(j) Inmates in the DDP with any of the above-mentioned predatory case factors specified in subsection 3269.5(f) who have not met the established exclusionary period in subsection 3269.5(h), and who also have victimization concerns noted on their Adaptive

Support Form can be housed in a non-designated DDP building, but cannot share a cell, bay, wing, or pod in a dorm with another inmate in the DDP with victimization noted on their Adaptive Support Form, or with any inmate who has predatory case factors that have not met the established exclusionary period in subsection 3269.5(h).

(k) An inmate in the DDP with any of the existing predatory case factors specified in subsection 3269.5(f) who has not met the established exclusionary period in subsection 3269.5(h), shall be excluded from housing with inmates in the DDP who are prone to victimization.

(l) Custody staff, when reviewing double-celling eligibility, shall conduct an assessment to determine if the inmate meets any of the predatory criteria, as specified in subsection 3269.5(f).

(1) Assessments to determine the existence of predatory factors shall include, but not be limited to, review of the following documents: CDC Form 128-B, General Chrono (Rev. 04/74), incorporated by reference; Classification Committee Notes; CDC Form 804 (08/00), Notice of Pending CDC-115, incorporated by reference; Rules Violation Reports (RVRs); Initial Housing Reviews; Confidential Files; and the Probation Officer's Report.

(2) Custody staff shall document their double-celling determination by noting either of the following in the comments section of the automated Classification Committee Chrono (Rev. 05/19), incorporated by reference, and the Initial Housing Review:

(A) Approved to cell with inmates in the DDP.

(B) Not approved to cell with inmates in the DDP.

(m) Inmates in the DDP shall be housed in designated DDP housing facilities or areas unless overriding medical, mental health, or predatory case factors exist. These factors take precedence over placement in a DDP designated setting. Separate designated DDP housing areas are not required for inmates housed in medical or mental health settings, as long as the predatory case factors referenced in subsection 3269.5(f) have been reviewed, and the minimum exclusionary periods referenced in subsection 3269.5(h) have been met. Once the overriding case factors have been addressed and the inmate in the DDP no longer requires housing in a specialized setting, the inmate shall be endorsed and transferred to a DDP designated institution or facility, as described in subsection 3269.5(b).

(n) Inmates in the DDP shall be provided required adaptive support services while housed at a non-DDP-designated housing area due to medical, mental health, or predatory case factors.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; and *Quine v. Beard*, No. C 14-02726 JST, *Clark v. California* 123 F. 3d 1267 (9th Cir. 1997), *Clark v. California* (2002) USDC-ND (No. C-96-1486-CRB).

Article 4. Disorders and Emergencies

3303. Safety and Security.

[Subsections 3303(a)(1) through (a)(3) are unchanged.]

[Subsection 3303(a)(4) is amended to read:]

(4) Staff and inmates shall be familiar with fire evacuation routes, exits, and procedures. An evacuation drill shall be conducted quarterly on each watch. Where such drill would jeopardize personal safety or facility security, staff shall conduct a walk-through of the procedures. Local operating procedures shall be adopted at each institution to ensure the safe evacuation of inmates with disabilities.

[Subsections 3303(a)(5) through (e) are unchanged.]

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; Clark v California (2002) USDC-ND (No. C-96-1486-CRB); Americans with Disabilities Act, Public Law 101-336, July 26, 1990, 104 Stat. 328.

Article 5. Inmate Discipline

[New section 3312.1 is adopted to read:]

3312.1 Disciplinary Methods for Inmates in the Developmental Disability Program.

(a) Inmates in the Developmental Disability Program (DDP) are subject to discipline in accordance with this article. However, throughout the disciplinary process, staff must take into consideration each inmate's adaptive support need(s) as it relates to the misconduct.

(b) For inmates in the DDP, staff shall monitor the inmate's behavior, and except as provided in subdivision (c), shall address minor misconduct informally, utilizing verbal counseling in accordance with section 3312(a)(1). Verbal counseling includes prompting, providing clear and specific instructions, utilizing effective communication, or all the above, commensurate with the inmate's specific adaptive support need(s), and warning the inmate of consequences of continued misconduct.

(c) Should verbal counseling not correct the inmate's behavior or if the inmate's misconduct is serious in nature, staff shall utilize the disciplinary methods in section 3312(a)(2) and (3). Staff must take into consideration the severity of the inmate's disability and the inmate's need for adaptive support services when determining the method of discipline.

(1) If circumstances at the time of the alleged misconduct allow staff the opportunity to utilize verbal counseling, staff shall review the inmate's adaptive support need(s) and provide relevant adaptive support(s). Staff must ensure the inmate understands, to the best of the inmate's ability, the consequences of continued misconduct.

(2) The Rules Violation Report (RVR) shall include whether relevant adaptive support service(s) were provided to the inmate, and the staff's assessment of whether the inmate understood, to the best of the inmate's ability, the consequences of their behavior.

(3) Attempting to correct misbehavior informally is not required if the circumstances at the time of the misconduct did not allow staff the opportunity to provide verbal counseling to address the behavior.

(4) A CDCR Form 115-MH-A (Rev. 12/15), Rules Violation Report: Mental Health Assessment (MHA), incorporated by reference, shall be completed by a trained Mental Health Assessing Clinician (AC) for inmates in the DDP, consistent with section 3317.

(5) When adjudicating an RVR, the hearing official shall take into account the inmate's adaptive support need(s), as indicated on their automated CDCR Form 128C-2 (Rev. 01/24), Developmental Disability Program Adaptive Supports Screening Results, located within SOMS and incorporated by reference, at the time of the incident, and whether the need for adaptive support(s) contributed to the misconduct. Victimization, when listed on the 128C-2, must always be considered. The hearing official shall document in the disability section of the RVR whether or not each of the inmate's noted adaptive support need(s) contributed to the misconduct, and how, if at all, it contributed.

(6) The hearing official shall consider the AC's evaluation, as documented on the MHA. The hearing official shall document their consideration of the AC's evaluation and take appropriate action to mitigate any adverse impacts to the inmate if the inmate's behavior that led to the RVR was related to a cognitive or adaptive functioning deficit and was found to have contributed to the inmate's behavior. The Senior Hearing Officer shall document the action taken in the Disciplinary Hearing Results section of the SOMS.

(7) The hearing official may mitigate penalties as recommended by the AC. If the hearing official does not mitigate penalties consistent with the AC's recommendation, they shall document the reasoning for their decision.

(8) If the inmate is found guilty of a rules violation, the Chief Disciplinary Officer (CDO) shall review all disciplinary methods and action in accordance with sections 3312(b)(1) and (b)(2). For RVRs issued to inmates in the DDP, the CDO shall be the ADA Coordinator, or their designee.

(d) The Americans with Disabilities Act (ADA) Coordinator at DDP designated institutions shall review RVRs issued to inmates in the DDP at least monthly to identify any patterns of misbehavior that may be related to the inmate's developmental disability. If the ADA Coordinator determines the patterns of misbehavior may be related to the inmate's developmental disability, they shall refer the inmate to the DDP Clinician or Interdisciplinary Support Team for review of appropriateness of all or any of the following: the inmate's current DDP designation; classification; or program placement.

(e) If an inmate in the DDP exhibits ongoing behavioral problems, institution clinical staff shall refer the case to the designated DDP Clinician, or their designee, for assistance in assessing the causes of the behavior and creating a behavioral modification treatment plan, when appropriate.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; CCR, Title 15, Division 3, Chapter 1, Subchapter 4, Article 5, Inmate Discipline; *Clark v California* (2002) USDC-ND (No. C-96-1486-CRB).

3318. Assistance to Inmates for Serious Rule Violations.

[Subsection 3318(a) is unchanged.]

[Subsection 3318(b) is amended to read:]

(b) Staff Assistant. The assignment of a Staff Assistant is mandatory for inmates in the Developmental Disability Program (DDP).

[Subsection 3318(b)(1) is amended to read:]

(1) The assigned ~~s~~Staff ~~a~~Assistant shall:

[Subsections 3318(b)(1)(A) through 3318(b)(1)(C) are unchanged.]

[New subsections 3318(b)(2) through (b)(2)(C) are adopted to read:]

(2) For all inmates in the DDP, the assigned Staff Assistant shall:

(A) Offer assistance reading relevant documents and completing necessary and related paperwork to prepare for the Rules Violation Report (RVR) hearing, if reading and writing is listed as an identified adaptive support need on the inmate's automated CDCR Form 128C-2 (Rev. 01/24), Developmental Disability Program Adaptive Supports Screening Results, located within SOMS and incorporated by reference.

(B) Be present at the disciplinary hearing and all interviews related to the disciplinary process including any waiver of the Investigative Employee; be present during the interview with the assigned Investigative Employee and the DDP inmate; and consult with the DDP inmate and confirm their decision if the DDP inmate declines to postpone the RVR hearing pending the status of the referral to the District Attorney for possible criminal prosecution.

(C) Provide and assist with effective communication, to the extent possible, when carrying out duties in subsections 3318(b)(2)(A)-(B).

[Existing subsections 3318(b)(2) through (b)(4) are renumbered (b)(3) through (b)(5), and are amended to read:]

(23) The inmate shall be informed that:

(A) The ~~s~~Staff ~~a~~Assistant shall keep confidential any sensitive information the inmate may discloses concerning the charges for which the ~~s~~Staff ~~a~~Assistant was assigned unless the inmate consents to disclosure or if disclosure is required by law or as described in section 3318(b)(4).

(B) All evidence and information obtained and considered or developed in the disciplinary process may be used in court if the violation has been or is to be referred for criminal prosecution.

(34) If the ~~s~~Staff ~~a~~Assistant becomes aware that the inmate is contemplating future criminal conduct, the ~~s~~Staff ~~a~~Assistant shall disclose this information if necessary to protect potential victims and prevent the contemplated crime.

(45) The ~~s~~Staff ~~a~~Assistant shall inform the inmate that all evidence and information obtained and considered or developed in the disciplinary process may be used in court if the same charges have been or are to be referred to the district attorney for possible criminal prosecution.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2932 and 5054, Penal Code. Clark v California (2002) USDC-ND (No. C-96-1486-CRB).

Article 7. Restricted Housing

[Existing vacated section 3335.5 is re-purposed]

~~3335.5. Exclusions.~~

[New section 3335.5 is adopted to read:]

3335.5 Restricted Housing for Inmates in the Developmental Disability Program.

(a) Notwithstanding section 3335, the following procedures shall apply to inmates in the Developmental Disability Program (DDP) housed in a restricted housing unit:

(b) Inmates in the DDP shall be provided adaptive support services, regardless of their housing setting. Mental health staff shall interview an inmate in the DDP who is placed in a restricted housing unit within 24 hours of placement and notify custody staff if any changes to the inmate's adaptive support services are required.

(c) The assigned Mental Health Clinician, or designee, shall monitor all inmates in the DDP who are placed in a restricted housing unit, on a weekly basis, to determine if the inmate's prescribed adaptive support services are adequate.

(d) Mental Health Services shall be contacted if the inmate's condition deteriorates. The referral shall be documented on the CDCR Form 128-MH5 (Rev. 05/14), Mental Health Referral Chrono, incorporated by reference, identifying the specific reason(s) for the referral, including but not limited to recommendations for alternative placement, and adaptive support services.

(e) A psychiatric technician, or designee, shall make contact with each inmate in the DDP in a restricted housing unit, on a daily basis, to monitor the inmate's adaptive functioning.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; Clark v California (2002) USDC-ND (No. C-96-1486-CRB).

3344. Assistance to Inmates for Restricted Housing Classification Hearings.

[Subsection 3344(a) is amended to read:]

(a) The Administrative Reviewer of the automated Restricted Housing Unit Placement Notice (RHUPN) (11/23), which is incorporated by reference, or official ordering an inmate retained in restricted housing, shall determine the need for providing assistance to inmates placed or retained in restricted housing. Such assistance may be in the form of a Staff Assistant (SA) or an Investigative Employee (IE). Only staff trained in the role and responsibilities of an SA or IE may be assigned. For inmates in the DDP, an SA is required to be present during the administrative review of the RHUPN when a RHUPN is required by this Article. The presence of the SA must be documented in those instances. The duties and functions of a staff member assigned to assist an inmate in a classification hearing based upon an automated RHUPN (11/23) will be separate from those described in section 3318 for a disciplinary hearing.

[Existing subsection 3344(b) is unchanged but is shown for reference purposes.]

(b) A SA shall be assigned if:

[Existing subsections 3344(b)(1) through (b)(3) are unchanged.]

[Existing subsection 3344(b)(4) is amended to read:]

(4) The inmate is included in the Mental Health Services Delivery System (MHSDS); ~~is Developmentally Disabled in the Developmental Disability Program (DDP), with a DDP designation of DD1, DD2, or DD3;~~ or the circumstances surrounding restricted housing unit placement involve behavior of a bizarre or unusual nature.

[Existing subsection 3344(b)(4)(A) is unchanged.]

[Existing subsection 3344(c) is unchanged.]

[Existing subsections 3344(d) through (d)(2) are unchanged.]

[Existing subsections 3344(e) through (e)(5) are unchanged.]

[Subsection 3344(e)(6) is amended to read:]

(6) Keep confidential any sensitive information the inmate ~~may disclose~~ concerning the charges for which the SA was assigned unless the inmate consents to disclosure or if disclosure is required by law as described in section 3344(e)(8).

[Subsections 3344(e)(7) through (e)(12) are unchanged.]

[New subsection 3344(f) is adopted to read:]

(f) In addition to the duties set forth in subsections 3344(e)(1)-(12), for all inmates in the DDP, the Staff Assistant shall also provide the following assistance:

(1) Offer assistance reading relevant documents and completing necessary and related paperwork to prepare for the classification hearing, if the adaptive support need is indicated on the inmate's automated CDCR Form 128C-2 (Rev. 01/24), Developmental Disability Program Adaptive Supports Screening Results, located within SOMS and incorporated by reference.

(2) Be present at the classification hearing and all interviews related to the classification process.

(3) Provide and assist with effective communication.

[Existing subsection 3344(f) is renumbered (g), but is otherwise unchanged, and is shown for reference purposes.]

(fg) The SA assigned and assisting the inmate in the manner described above shall be the same staff member who appears with the inmate at the classification hearing.

Existing subsections 3344(h) through (l)(8) are renumbered (i) through (m)(8) but are otherwise unchanged.]

Note: Authority cited: Section 5058 Penal Code. Reference: Section 5054, Penal Code; *Coleman v. Wilson* 912 F. Supp. 1282 (E.D. Cal 1995); and *Clark v California* 123 F. 3d 1267 (9th Cir. 1997) (2002) USDC-ND (No. C-96-1486-CRB).

[New Article 9.1 is adopted to read:]

Article 9.1 ~~Research of Inmates/Parolees [Repealed]~~ Developmental Disability Program

[New sections 3369.5 through 3369.13 are adopted to read:]

3369.5. ~~Research. [Repealed]~~ Developmental Disability Program: General Policy.

(a) The primary objective of the Developmental Disability Program (DDP) is to provide equal access to programs, services, and activities to inmates with developmental disabilities and those with cognitive and concurrent adaptive functioning deficits meeting the established inclusion criteria. All departmental programs, services, and activities shall be equally accessible to participants in the DDP, and CDCR shall promote and facilitate participation consistent with legitimate penological interests.

3369.6. Reception Center Screening and Processing.

(a) With the exception of subsection 3369.6(a)(1), CDCR shall screen all inmates at a Reception Center for potential inclusion into the Developmental Disability Program (DDP) and house inmates in a manner that addresses their safety and security needs. The automated CDCR Form 200-A (01/24), Developmental Disability Program Adaptive Support Log – Housing Unit, located within SOMS and incorporated by reference, with a photograph of the inmate identified in the DDP, shall be maintained by custody staff in a secure location.

(1) CDCR will not screen any condemned inmate (those serving a death sentence) for potential inclusion into the DDP when a CDCR Form 0201 (01/24), Condemned Incarcerated Persons – Waiver of Developmental Disability Program Screening and Inclusion, incorporated by reference, signed by both the inmate and their legal counsel, has been received by CDCR within 30 calendar days of the inmate's arrival at a Reception Center.

(2) If at any time the condemned inmate with the waiver of DDP screening is no longer condemned, or serving a death sentence, or their death sentence has been overturned or commuted and their sentence is not subject to further appeals, the DDP waiver is no longer valid and CDCR shall screen the inmate pursuant to subsection 3369.6(a).

(b) Inmates in the DDP who parole and return to CDCR on a new term (new CDCR number), shall be re-screened for DDP placement consistent with subsection 3369.6(a).

(c) If an inmate in the DDP paroled and returns to CDCR five years or more from the date of their last term, the inmate shall be re-screened for DDP placement consistent with subsection 3369.6(a).

(d) Within 30 calendar days of arrival at a designated DDP institution or facility, inmates in the DDP shall be provided orientation by designated staff, consistent with section 3002 and as prescribed by local operating procedures.

(e) The orientation process shall be documented on a CDC Form 128-B (Rev. 04/74), General Chrono, incorporated by reference, and retained in the inmate's central file.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054. Penal Code; *Clark v California* (2002) USDC-ND (No. C-96-1486-CRB).

3369.7. Developmental Disability Program Criteria and Categories.

(a) Criteria for inclusion in the Developmental Disability Program (DDP) requires both low cognitive functioning (IQ of 75 or below) and concurrent adaptive functioning deficits.

(1) On a case-by-case basis, inmates with an IQ above 75 may be included in the DDP if their adaptive functioning is poor and their needs are not met through another program, e.g., Disability Placement Program (DPP), Enhanced Outpatient Program (EOP), etc.

(2) Cognitive or adaptive deficits entirely due to mental or physical illnesses requiring long-term hospital care are not criteria for inclusion in the DDP. Inmates with severe mental or physical illnesses may exhibit deficits in cognitive and adaptive abilities. Such inmates may be excluded from the DDP if they meet both of the following criteria:

(A) Their mental or physical illness is entirely responsible for these deficits, i.e., they would not need the adaptive supports of the DDP except for their illness.

(B) Their illness is being treated in a medical setting, including but not limited to: EOP, Outpatient Housing Unit (OHU), Correctional Treatment Center (CTC), General Acute Care Hospital (GACH), Acute Care Hospital (ACH), Department of Mental Health (DMH), etc.

(b) Based on DDP screening results, mental health staff shall place inmates into one of the following designations:

(1) Negative Current Finding (NCF) – Inmate has adequate cognitive functions, based on receipt of a passing score on a cognitive screening instrument; therefore does not require an adaptive functioning evaluation. An inmate designated NCF is not included in the DDP.

(2) Negative Disability Designation (NDD) – Inmate may have low cognitive functioning but was determined not to have adaptive support needs. An inmate designated NDD is not included in the DDP, but had an adaptive functioning evaluation completed.

(3) DD1 – Inmate can function successfully in a General Population (GP) setting in a designated DDP institution consistent with other case factors and usually does not require prompts to initiate activities of self-care and daily living. The inmate may need supervision or guidance and assistance when under unusual stress or in new situations. The inmate requires housing in a designated DDP building, unit, or wing.

(4) DD2 – Inmate can function successfully in a GP setting in a designated DDP institution consistent with other case factors. The inmate requires prompts to initiate self-care, daily living activities, or both, and may have victimization concerns, thereby requiring housing in a designated DDP building, unit, or wing.

(5) DD3 – Inmate requires placement in a highly structured, specialized program in a designated DDP institution capable of meeting the inmate's needs. The inmate requires constant prompts and can likely not complete tasks without them. The inmate may have victimization concerns, thereby requiring housing in a designated DDP building, unit, or wing.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054. Penal Code; *Clark v California* (2002) USDC-ND (No. C-96-1486-CRB).

3369.8. Extended Reception Center Stay for Inmates in the Developmental Disability Program.

(a) In accordance with section 3379(b), inmates in the Developmental Disability Program (DDP) shall be processed and transferred to the endorsed institution or facility no more than 60 calendar days from the date they are received at the Reception Center (RC).

unless the inmate is detained due to non-developmental disability related circumstances preventing the inmate's transfer to another institution. Non-developmental disability related circumstances include, but are not limited to: medical necessity, court appearances, pending disciplinary proceedings, and no documented in-level bed availability system-wide.

(b) Expedited Transfers.

(1) Once an inmate at a RC is placed into the DDP the Correctional Counselor (CC) III shall ensure the RC processing is completed by the CC I, approved and signed by the Committee Chairperson, and the case is presented to the Classification Staff Representative (CSR) within 14 working days.

(2) The CSR shall endorse inmates in the DDP to an appropriate designated DDP institution or facility.

(3) Inmates in the DDP, awaiting transfer to the endorsed institution or facility, shall be provided adaptive support services, as identified on the inmate's automated CDCR Form 200-A (01/24), Developmental Disability Program Adaptive Support Log - Housing Unit, which is located within SOMS and is incorporated by reference.

(c) Privileges.

(1) Inmates in the DDP who remain at a RC for more than 60 calendar days are entitled to privileges that are available to inmates at general population institutions, as outlined in section 3044(d), Privilege Group A.

(2) When the Correctional Counselor (CC) III or Classification and Parole Representative (C&PR) responsible for tracking inmates in the DDP determines that an inmate in the DDP will exceed 60 calendar days in a RC, the inmate's case shall be presented to a classification committee on or before the 61st calendar day to determine if the inmate is entitled to extended stay privileges, consistent with section 3044(b)(8)(G).

(3) The committee's decision shall be documented in the automated Classification Committee Chrono (Rev. 05/19), incorporated by reference, and the appropriate custody staff shall be notified to ensure privileges are provided as required.

(4) If a classification committee denies extended stay privileges, the inmate in the DDP shall be returned to the classification committee every 30 calendar days thereafter to re-evaluate their case for extended stay privilege eligibility.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054. Penal Code; *Clark v California* (2002) USDC-ND (No. C-96-1486-CRB).

3369.9. Identification of Developmental Disability Program Inmates within the Existing Population.

(a) Referrals.

(1) Inmates may be referred for consideration of placement into the Developmental Disability Program (DDP) at any time even if they were not included in the DDP during the initial screening process. Any staff member may submit a referral to the Mental Health Program by submitting a CDCR Form 128-MH5 (Rev. 05/14), Mental Health

Referral Chrono, incorporated by reference. Inmates may also self-refer by notifying staff or submitting a CDCR Form 1824 (Rev. 09/17), Reasonable Accommodation Request, which is incorporated by reference.

(2) If an inmate's adaptive support(s), listed on their automated CDCR Form 128C-2 (Rev. 01/24), Developmental Disability Program Adaptive Supports Screening Results, located within SOMS, and incorporated by reference, do not match their current level of functioning, staff shall document their observation on a CDCR Form 128-MH5 (Rev. 05/14), Mental Health Referral Chrono and submit the CDCR Form 128-MH5 to the Mental Health Program.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054. Penal Code; *Clark v California* (2002) USDC-ND (No. C-96-1486-CRB).

3369.10. Adaptive Support Services.

(a) Mental health staff shall identify the specific adaptive support services the inmate may need, for inmates placed in the Developmental Disability Program (DDP). Mental health staff identify this information on the automated CDCR Form 128C-2 (Rev. 01/24), Developmental Disability Program Adaptive Supports Screening Results, which is located within SOMS and is incorporated by reference.

(b) Documenting Adaptive Supports.

(1) Staff shall provide inmates in the DDP with adaptive support services, as listed, and at the frequency indicated, on the inmate's automated CDCR Form 200-A (01/24), Developmental Disability Program Adaptive Support Log - Housing Unit (Adaptive Support Log), located within SOMS and incorporated by reference, in all institutions. Adaptive support services are provided to ensure inmates in the DDP have equal access to programs, services, and activities.

(2) Supervisors shall ensure staff are providing inmates in the DDP with adaptive support services, as listed, and at the frequency indicated, on the inmate's Adaptive Support Log, and that staff are documenting this information on the automated CDCR Form 200-A, Developmental Disability Program Adaptive Support Log – Housing Unit, or automated CDCR Form 200-B (01/24), Developmental Disability Program Adaptive Support Log – Work/School, which is incorporated by reference and is located in SOMS (Adaptive Support Log).

(3) Supervisors shall conduct a weekly review of the inmate in the DDP's Adaptive Support Log (CDCR Forms 200-A and 200-B) in the housing, work, and education areas.

(c) Written materials.

(1) Staff shall provide assistance to all inmates in the DDP on a case-by-case basis to ensure that those who have difficulty reading or communicating in writing, or both, will be provided reasonable assistance with completing and reading departmental documents.

(d) Verbal Announcements.

(1) Staff shall ensure that effective communication is used with all inmates in the DDP regarding public address announcements and reporting instructions, including but not limited to visiting, yard release and recall, count, lock-up, and unlock.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054. Penal Code; *Clark v California* (2002) USDC-ND (No. C-96-1486-CRB).

3369.11. Interdisciplinary Support Team.

(a) The Interdisciplinary Support Team (IDST) is a multiple member team at institutions, and acts as the Institution Classification Committee, Unit Classification Committee, or both, for inmates in the DDP. The IDST reviews and determines program needs of inmates in the DDP.

(b) The IDST is comprised of clinical, classification, custodial, and education staff. It must include, at a minimum, the following staff:

(1) The inmate's assigned CC I.

(2) A Mental Health Clinician, or clinical staff assigned to monitor the inmate's adaptive support needs.

(3) The Facility Captain or their designee.

(A) The correctional officer assigned to monitor the inmate's daily activities, and educational and work staff, shall participate as an IDST member when requested by the committee.

(c) The IDST shall review and determine the inmate's classification, custody, and program. Additionally, the IDST shall review the inmate's adaptive support services, as indicated on the inmate's automated CDCR Form 128C-2 (Rev. 01/24), Developmental Disability Program Adaptive Supports Screening Results, located within SOMS and incorporated by reference, to ensure the provision of adaptive support services, as indicated.

(1) With the exception of the initial IDST, the IDST shall query the inmate to confirm that departmental staff are offering, providing, or assisting with adaptive support services, as indicated on the inmate's automated CDCR Form 128C-2, and make recommendations to clinical staff, custody staff, or both, to address any identified gaps, including but not limited to modifying adaptive support services commensurate to the inmate's current level of adaptive functioning, changes to the inmate's DDP designation, or both, as appropriate.

(2) The initial IDST after an inmate's arrival at an institution or after a DDP designation change, shall inform the inmate that institutional staff will provide prescribed adaptive support services at the institution where the inmate is located.

(d) The initial IDST review shall be completed within 14 calendar days of the inmate's arrival at an institution or after a DDP designation change.

(1) The IDST shall conduct routine reviews based on the inmate's DDP designation and individual needs, at the following frequency:

(A) DD1: annually.

(B) DD2: every six months.

(C) DD3: every three months.

(e) The IDST may review a DDP case more frequently, if needed.

(f) All decisions, actions, and recommendations by the IDST shall be documented on the automated Classification Committee Chrono (Rev. 05/19), incorporated by reference.

(1) The names of participants in the IDST shall also be included on the automated Classification Committee Chrono.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054. Penal Code; Clark v California (2002) USDC-ND (No. C-96-1486-CRB).

3369.12. Inmate Work and Program Assignments.

(a) All inmates with disabilities are entitled to equal access to work and programs, as inmates without disabilities.

(b) Once an inmate has been assigned to a program, and staff are aware the inmate has a disability and needs a reasonable accommodation(s), the staff administering the program shall make the necessary reasonable accommodation(s), where possible, to enable the inmate's participation.

(1) Accommodations may include, but are not limited to assistive devices, and modifications or adjustments to a program.

(c) An inmate's disability or Developmental Disability Program (DDP) designation shall not be the sole basis for precluding a work or program assignment. An inmate in the DDP, who may be eligible for a work or program assignment, shall be referred to the Interdisciplinary Support Team (IDST) or Unit Classification Committee (UCC) for further placement consideration. Assignment shall be made on a case-by-case basis, taking into consideration the totality of the inmate's case factors.

(d) When an inmate in the DDP is disqualified or removed from a program or work assignment, the determination shall be documented on the automated Classification Committee Chrono (Rev. 05/19), incorporated by reference.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054. Penal Code; Clark v California (2002) USDC-ND (No. C-96-1486-CRB).

3369.13 Academic Assignments.

(a) Designated Developmental Disability Program (DDP) institutions shall provide student support during education assignments for inmates in the DDP.

(b) Instructional staff shall have credentials issued by the California Commission on Teacher Credentialing. A minimum of one instructor at each designated DDP institution must have a Special Education Credential and be assigned as a Resource Specialist Program (RSP) teacher.

(c) Notwithstanding reasonable circumstances for delay, a Student Study Team comprised of the RSP teacher, the classroom teacher, an education supervisor, and the inmate, shall meet within ten working days of an inmate in the DDP being assessed and placed in an education program. Thereafter, the Student Study Team shall meet at least once annually for review and assessment of the inmate's placement. Circumstances that may warrant delay include, but are not limited to inmate refusal, modified programming at the institution, or situations that pose a threat or jeopardize the safety or security of the inmate, staff, the institution, or others. A teacher may request a team meeting whenever there are behavioral issues that must be addressed to prevent removal from the assignment.

(d) All inmates in the DDP who have been assigned to education programs shall be assessed in reading grade level and math. An Individually Tailored Education Plan (ITEP) shall be created for the inmate to establish goals, objectives, or accommodations, taking into consideration the individual's adaptive support needs. The ITEP shall be reviewed at least every six months.

(e) For inmates in the DDP, with severe cognitive disabilities and who have not made educationally expected progress on formative, summative, and standardized educational assessments pertaining to their enrolled classes, the RSP teacher or designee may initiate a Student Study Team to consider the appropriateness of a Certificate of Attendance and Participation (CAP) for the inmate. A CAP may be approved by the Classification Committee on a case-by-case basis. If a CAP is approved the inmate in the DDP will be unassigned from the class and reassigned to an appropriate program or wait list if the program has a wait list.

(1) Inmates in the DDP meeting all of the following criteria are eligible for a CAP:

(A) Reading level of 4.0 or below.

(B) Assigned to a DDP teacher or principal designee for a minimum of one year.

(C) Attended at least four years of education beyond the eighth grade, at an accredited secondary school (public, private, or CDCR).

(D) Satisfactorily met the Individually Tailored Education Plan (ITEP) goals and objectives as determined by the Student Study Team.

(E) Participated in an instructional program as prescribed in their ITEP.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054. Penal Code *Clark v California* (2002) USDC-ND (No. C-96-1486-CRB).

Article 9.5. Case Records

3370. Case Records File and Unit Health Records Material--Access and Release.

[Subsections 3370(a) through (e) are unchanged.]

[New subsection 3370(f) is adopted to read:]

(f) Inmates shall not have access to another inmate's Developmental Disability Program (DDP) status.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2081.5, 5054 and 6126.5, Penal Code; Sections 56.10, 1798.24 and 1798.40, Civil Code; and Code of Federal Regulations, Title 45, Sections 164.512 and 164.524; Clark v California (2002) USDC-ND (No. C-96-1486-CRB).

Article 10. Classification

[New section 3376.2 is adopted to read:]

3376.2. Classification of Inmates in the Developmental Disability Program.

(a) Case management for all inmates in the Developmental Disability Program (DDP) shall comply with established classification procedures.

(b) Classification procedures and committee decisions shall ensure that inmates in the DDP are not exposed to a significant risk of harm, abuse, or harassment.

(c) The Interdisciplinary Support Team (IDST) at designated DDP institutions shall review and record in the classification committee notes, the continued appropriateness of an inmate's placement in the DDP, including the inmate's designated endorsement and any determination made regarding the inmate's prescribed adaptive support needs.

(d) The IDST members shall:

(1) Conduct a housing review to ensure housing is commensurate with the inmate's current case factors and DDP designation.

(2) With the exception of the initial IDST as described in subsection 3369.11(c)(2), ensure the inmate's prescribed adaptive support services are being offered and provided, consistent with their DDP designation, and that those supports are appropriate given the inmate's current adaptive functioning.

(3) Ensure work supervisors and school educators are aware of all the inmate's adaptive support needs. A current list of the inmate's adaptive supports is required to be kept in the work and education areas for all inmates in the DDP assigned to a work or program assignment. During the first two weeks of a work or school assignment, and as needed thereafter, staff shall provide the adaptive support needs listed on the automated CDCR Form 200-B (01/24), Developmental Disability Program Adaptive Support Log - Work/School, which is located within SOMS and is incorporated by reference. As needed, all other adaptive support needs as indicated on the automated CDCR Form 128C-2 (Rev. 01/24), Developmental Disability Program Adaptive

Supports Screening Results, located within SOMS and incorporated by reference (Adaptive Support Form), shall be provided, and recorded on the automated CDCR Form 200-B (01/24) Developmental Disability Program Adaptive Support Log – Work/School.

(4) Review the CDCR Form 128C-2 at the initial and annual classification committees for all inmates housed in a designated DDP building or unit, to identify whether the inmate has any case factors, including predatory case factors as set forth in subsection 3269.5(f), that would require a different housing placement.

(e) If an inmate's individual circumstances demonstrate they are unable to benefit from specific educational programming despite efforts to enable the inmate's meaningful participation in educational programming, the inmate will be considered for removal. The request can be made by the inmate; educational, medical, or custody staff; or by a combination or all of these individuals.

(1) Consistent with section 3040.3(b), the classification committee, with an Educational Administrator as a committee member, shall review any requests for removal from educational programming.

(2) If removal from educational programming is approved, the Inmate Assignment Office shall un-assign an inmate from the class and may reassign them to an appropriate alternate assignment or waitlist.

Note: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference Sections 3020, 5054 and 5068, Penal Code. *Clark v California* (2002) USDC-ND (No. C-96-1486-CRB); Americans with Disabilities Act, Public Law 101-336, July 26, 1990, 104 Stat. 328.

DEVELOPMENTAL DISABILITY PROGRAM
ADAPTIVE SUPPORTS SCREENING RESULTS

Institution: _____

Patient Name: _____ CDCR#: _____ Fin #: _____ DOB: _____ Age: _____

Height : _____ Weight : _____ Sex: _____ Admit Date: _____ CASE Date: _____

Admitting Diagnosis: _____ Completed By: _____ Patient Location: _____

Patient Type: ☐ Institutional Encounter ☐ Inpatient Encounter

Screening Results

Orderable: MH DDP Phase 3 Screen Results
Results: N/A / NCF / NDD / DD1 / DD2 / DD3

Referral to health care services staff shall occur at any time deterioration or change in daily functioning occurs. Adaptive support services shall be updated as needed.

Activities of Daily Living: _____

Communication: _____

Behavior/Social Interactions: _____

Victimization: _____

Reading and Writing: _____

Rules and Procedures: _____

DEVELOPMENTAL DISABILITY PROGRAM
ADAPTIVE SUPPORTS SCREENING RESULTS
CDCR 128C-2 (Rev. 01/24)

DEFINITIONS

- NCF:** **Negative Current Finding** – Inmate has adequate cognitive functions, based on receipt of a passing score on a cognitive screening instrument; therefore does not require an adaptive functioning evaluation. An inmate designated NCF is not included in the DDP.
- NDD:** **Negative Disability Designation** – Inmate may have low cognitive functioning but was determined not to have adaptive support needs. An inmate designated NDD is not included in the DDP, but had an evaluation completed.
- DD1** **Developmental Disability 1** – Inmate can function successfully in a General Population (GP) setting in a designated DDP institution consistent with other case factors and usually does not require prompts to initiate activities of self-care and daily living. The inmate may need supervision or guidance and assistance when under unusual stress or in new situations.
- DD2** **Developmental Disability 2** – Inmate can function successfully in a GP setting in a designated DDP institution consistent with other case factors. The inmate requires prompts to initiate self-care, daily living activities, or both, and may have victimization concerns, thereby requiring housing in a designated DDP building, unit, or wing.
- DD3** **Developmental Disability 3** – Inmate requires placement in a highly structured, specialized program in a designated DDP institution capable of meeting the inmate's needs. The inmate requires constant prompts and can likely not complete tasks without them. The inmate may have victimization concerns, thereby requiring housing in a designated DDP building, unit, or wing.

Page 1 of 1

This form is to be printed out for staff to complete manually.

Housing Unit Adaptive Support Log (ASL) Instructions: Staff shall maintain frequent contact with the inmate to monitor and provide staff assistance consistent with the adaptive support needs of the inmate. Staff shall initial and provide comments in the row of the corresponding date for any **monitoring, prompting, coaching or assistance** they provide the inmate, and document the outcome. **Staff shall never document, “No prompts needed” in the comments. Frequency of assistance is determined by the inmate’s needs and may be required more frequently than the minimum frequencies listed in the Adaptive Support Type/Needs row. If more space is needed, staff shall document on the back of the log using the date and their initials.** In the event an inmate in the Developmental Disability Program (DDP) is transferred out of the institution, staff shall not send the Adaptive Support Logs. They shall be archived consistent with the Record Retention Schedule.

Supervisor's Review of Completed DDP Adaptive Support Log

Supervisor's Printed Name: _____ Signature: _____ Date of Supervisor's Review: _____

DISTRIBUTION: White: Housing Area

**DEVELOPMENTAL DISABILITY PROGRAM
ADAPTIVE SUPPORT LOG - WORK/SCHOOL
CDCR 200-B (01/24)**

Page 1 of 1

This form is to be printed out for staff to complete manually.

CDCR Number:		Name:		Housing:		Bed Number:		DDP Code:		Inmate Photo	
Print Staff Initials & Name in Legend Below -Do not use Personnel Numbers (PERNR) on this form											
Initials	Name			Initials	Name			Initials	Name		
Hire Date:				Is Hire Date Within 2 Weeks:				Job/Position Number:		RDO's:	

Work/School Adaptive Support Log (ASL) Instructions: Staff shall maintain frequent contact with the inmate to monitor and provide staff assistance as documented on the Work/School ASL and the CDCR Form 128C-2. Staff shall initial and provide comments in the row of the corresponding date for any monitoring, prompting, coaching or assistance they provide the inmate, and document the outcome. **Staff shall never use, "No prompts needed." Frequency of assistance is determined by the inmate's needs and may be required more frequently than indicated in the Adaptive Support Type/Need row. If more space is needed, staff shall document on the back of the log using the date and their initials.** In the event an inmate in the Developmental Disability Program (DDP) is transferred out of the institution or into another Work/School Assignment, do not send the Adaptive Support Logs. They shall be archived consistent with the Record Retention Schedule.

Adaptive Support Type/Needs:		Learning new tasks: <i>Must be logged daily for first two weeks of assignment.</i>	Adjusting to new routines: <i>Must be logged daily for first two weeks of assignment.</i>	Extra time for completion of tasks: <i>Must be logged daily for first two weeks of assignment.</i>	Unusual Workplace Occurrences (e.g. Hygiene/Safety Concerns, etc.): Any time unusual occurrences are observed (even outside of first two weeks of assignment), contact shall be made with DDP Mental Health staff and DDP Custody staff, if available.	
Check When Provided:						
Day of the Week	Initial					
MON						
TUE						
WED						
THU						
FRI						
SAT						
SUN						
General Comments:						

Supervisor's Review of Completed DDP Adaptive Support Log

Supervisor's Printed Name: _____ Signature: _____ Date of Supervisor's Review: _____

DISTRIBUTION White: Work or Education site

**CONDEMNED INCARCERATED PERSONS - WAIVER OF DEVELOPMENTAL
DISABILITY PROGRAM SCREENING AND INCLUSION**

CDCR 0201 (01/24)

Page 1 of 1

Upon reception, the California Department of Corrections and Rehabilitation (CDCR) screens all incarcerated persons for potential inclusion into the Developmental Disability Program (DDP). DDP screening encompasses cognitive tests (Phase I and Phase II) and the *Clark* Adaptive Support Evaluation (Phase III), which may include an interview with the incarcerated person, staff, or both, and a review of relevant records.

CDCR will not initiate screening for inclusion into the DDP for any incoming condemned incarcerated person until thirty (30) calendar days after the incarcerated person's arrival in prison, to allow appellate counsel for the condemned incarcerated person to advise them and communicate to CDCR in writing any waiver of the DDP screening.

I _____, attest:

PRINT NAME OF INCARCERATED PERSON

- I am currently serving a death sentence at the CDCR; and
- I am electing to waive DDP screening; and
- By waiving the DDP screening process, I understand I am specifically waiving inclusion in the DDP and I will not be part of the DDP; and
- I understand that my waiver of DDP screening is a legal defense for CDCR, for any claims made, relief sought, or both, related to allegations that I may make against CDCR for failure to accommodate any developmental disability I may allege; and
- I understand that by waiving DDP screening, this does not preclude CDCR from engaging in other departmental screening or processes intended to identify appropriate housing, services, or both, for condemned incarcerated persons; and
- I understand my waiver of DDP screening only applies if I am serving a death sentence (i.e., condemned); and
- At any point if I am no longer serving a death sentence while incarcerated at the CDCR (i.e., death sentence is overturned or commuted and is not subject to further appeals), this waiver of DDP screening is no longer valid and CDCR will screen me for potential inclusion into the DDP; and
- I understand I should consult with my appellate counsel about the DDP screening process, and both my appellate counsel and I shall sign this waiver agreement for it to be valid; and
- I understand I may withdraw my waiver of DDP screening at any time by submitting a written request, signed by both my appellate counsel and myself, addressed to CDCR to withdraw this waiver.

I attest all above statements are true and correct and by signing this form, I am doing so voluntarily of my own free will to waive DDP screening and inclusion into the DDP.

PRINTED NAME/ CDCR NUMBER
(Incarcerated Person)

SIGNATURE (Incarcerated Person)

DATE

PRINTED NAME (Appellate Counsel)

SIGNATURE (Appellate Counsel)

DATE

Instructions: The completed form shall be transmitted to CDCR by email:

CDCRCCWFLitigationCoordinator@cdcr.ca.gov (for female institutions) and

CDCRSQLitigationCoordinator@cdcr.ca.gov (for male institutions).

INITIAL STATEMENT OF REASONS

The California Department of Corrections and Rehabilitation (CDCR or department) proposes to amend the California Code of Regulations (CCR) Title 15, Division 3, sections 3000, 3004, 3031, 3040, 3041, 3041.1, 3044.1, 3120, 3192, 3220, 3269, 3303, 3318, 3344, and 3370; adopt new sections 3269.5, 3312.1, 3335.5, and 3376.2; and adopt new article 9.1, sections 3369.5 through 3369.13 pertaining to inmates with developmental disabilities. The proposed regulations are a result of the *Clark vs. California* settlement order and will incorporate agreements between CDCR and the courts. The department and plaintiffs' counsel have been in ongoing negotiations to reach agreements on many of the policies in the proposed regulations. The proposed regulations are part of the department's plan to adopt sustainable policies and processes.

The CDCR is committed to providing equal access to its programs, services, and activities. No qualified inmate with a disability shall, because of that disability, be subjected to discrimination or be denied the benefits of programs, services, or activities of the department.

On April 22, 1996, inmates with developmental disabilities in California filed a class action lawsuit in the United States District Court for the Northern District of California: *Clark vs California*, alleging that the CDCR discriminated against them. The District Court entered a remedial order and injunction directing CDCR to develop a plan for compliance. The Clark Remedial Plan includes detailed policies and procedures to assure identification, appropriate classification, housing, protection, and nondiscrimination of inmates and parolees with developmental disabilities. The Clark Remedial Plan required, among other things, that the department put into place a system that screens all inmates to identify those with a developmental disability. Inmates are screened by mental health staff, and if determined to have low cognitive functioning and concurrent adaptive functioning deficits in the prison setting, they are placed into the Developmental Disability Program (DDP) in one of three categories, based upon their adaptive support needs. Adaptive support needs vary from person to person and are specific to each individual. They can include, but are not limited to, prompts to perform self-care, or activities of daily living; assistance with reading or writing; the use of slower or simple communication; and the need for staff to remind or explain rules and procedures. The designated DDP categories are DD1, DD2, and DD3, with DD1 requiring the least amount of assistive needs for the inmate, and DD3 requiring the highest amount of assistive needs for the inmate. Inmates in the DDP are provided specialized housing to meet their adaptive support needs. The department's commitment to providing safe housing and the effective and equal delivery of programs, services, and activities to those in the DDP is articulated in the *Clark* Remedial Plan.

On December 3, 2001, the District Court approved the parties' settlement agreement adopting the *Clark* Remedial Plan. Since its implementation, the department has been subject to additional court orders and settlement agreements which modified the December 3, 2001 agreement governing the care and treatment of inmates with developmental disabilities. On March 15, 2002, the District Court approved the parties'

stipulation to modify and adopt the modified *Clark* Remedial Plan. On February 12, 2007, the District Court approved the parties' additional stipulation to further revise the terms of the *Clark* Remedial Plan. The District Court ordered additional amendments to the *Clark* Remedial Plan on September 16, 2010. The Parties further revised certain terms of the *Clark* Remedial Plan on December 22, 2015.

The purpose of the proposed regulatory action is to adopt regulations in response to existing court orders and establish policy for immediate and ongoing compliance with the provisions of the Americans with Disabilities Act (ADA) and section 504 of the Rehabilitation Act as it relates to inmates in the DDP. Existing regulatory language is revised for clarity and easier reference. New regulatory provisions are added to establish new processes.

The proposed regulations incorporate by reference four new forms into Title 15, Division 3, Chapter 1,.

The automated CDCR Form 128C-2 (Rev. 01/24), Developmental Disability Program Adaptive Supports Screening Results, is completed by mental health staff to identify inmates to be included in the DDP, designate them into their specific DDP category (DD1, DD2, or DD3) if the inmate is included in the DDP, and list all of the inmate's prescribed adaptive support needs. This form is completed in the Electronic Health Records System (EHRS) and the information auto-populates to the Strategic Offender Management System (SOMS).

The automated CDCR Form 200-A (01/24), Developmental Disability Program Adaptive Support Log – Housing Unit, and the automated CDCR Form 200-B (01/24), Developmental Disability Program Adaptive Support Log – Work/School, are also auto-generated, pulling information from EHRS and SOMS. These Adaptive Support Logs (ASL) are used by staff to identify the adaptive support needs of inmates in the DDP, specific to the housing and work/school areas. Additionally, the ASL are used by staff to document the offering and providing of adaptive support services to inmates in the DDP. The Housing ASL is used indefinitely, as long as the inmate remains in the DDP. The Work/School ASL is used for the first two weeks of the inmate in the DDP's new program assignment to assist the inmate with learning new tasks, adjusting to new routines, and ensuring the inmate is given extra time for completion of tasks, if needed. Thereafter, the Work/School ASL is only used to document any unusual workplace or school occurrences. The Work/School ASL lists adaptive support needs specific to the work and school environment (for example: extra time needed for learning new tasks), therefore, the automated CDCR Form 128C-2 is also provided to work and school locations, to ensure work supervisors and school educators are notified of all of the adaptive support needs of the inmate in the DDP. The ASLs are generated in SOMS, however staff print out the logs and input their notes manually, as any staff member that provides adaptive support services to an inmate in the DDP is required to document the provision on the ASL. Given that not all staff members have access to SOMS, printing the log and completing it manually is the most effective method of documentation.

Staff use of these DDP forms will help ensure that inmates in the DDP are provided adaptive support services commensurate with their adaptive support needs. Adaptive support services are intended to help inmates in the DDP to function to the best of their ability, be provided with equal access to CDCR programs, services, and activities, and not be subjected to discrimination on the basis of their disability.

The CDCR Form 0201 (01/24), Condemned Incarcerated Person - Waiver of Developmental Disability Program Screening and Inclusion provides for a waiver of screening and inclusion of condemned inmates into the DDP. The form must be signed by both the inmate and their legal counsel and must be received by CDCR within 30 calendar days of the inmate's arrival at a Reception Center. This form provides a choice for condemned inmates who may feel that DDP screening could adversely impact their pending or future appeal of their death penalty case. The form is submitted in hard copy format but is scanned for inclusion into the Electronic Records Management Systems (ERMS), so that it may be accessible for all staff who may need to access it.

CONSIDERATION OF ALTERNATIVES:

The department must determine that no reasonable alternatives considered, or that have otherwise been identified and brought to the attention of the department, would be more effective in carrying out the purpose for which this action is proposed, would be as effective and less burdensome to affected private persons than the action proposed, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Currently, no reasonable alternatives have been brought to the department's attention that would alter the department's initial determination.

ECONOMIC IMPACT ASSESSMENT:

In accordance with Government Code Section 11346.3(b), the CDCR has made the following assessments regarding the proposed regulations:

Creation of New, or Elimination of Existing, Jobs within the State of California

The department has determined that the proposed regulations will not have an impact on the creation of new or the elimination of existing jobs within California as the proposed regulations only affect the internal management of CDCR prisons.

Creation of New, or the Expansion or Elimination of Existing, Businesses within the State of California

The department has determined that the proposed regulations will not have an impact on the creation of new or the elimination of existing businesses within California or affect the expansion of businesses currently doing business in California as the proposed regulations only affect the internal management of CDCR prisons.

Benefits to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

The department has determined that the proposed regulations will benefit the health and welfare of California residents, specifically CDCR inmates in the DDP, because the proposed regulations promote equity, inclusivity, and nondiscrimination of these individuals. The proposed regulations will have no impact on worker safety or the State's environment, as the proposed regulations only affect the internal management of CDCR prisons.

Significant Adverse Economic Impact on Business

The department has made an initial determination that the regulatory action will not have a significant adverse economic impact on business. The proposed regulations do not have a direct impact on California businesses as the proposed regulations only affect the internal management of CDCR prisons.

BENEFITS OF THE REGULATIONS:

These regulations will provide statewide, standardized processes, with the goal of upgrading the efficiencies in each correctional setting, including the local ADA Coordinator offices and other areas responsible for ensuring equal access and a discrimination-free environment for inmates with a developmental disability. The update of these regulations to comply with federal court orders and evolving ADA law will help ensure the fair and consistent administration of these regulations as they relate to inmates with developmental disabilities. All of the proposed changes are designed to support the department's mission of providing a safe and secure environment, and to provide equity, inclusivity, and non-discrimination for inmates in the DDP.

Forms Incorporated by Reference:

- CDCR Form 128C-2 (Rev. 01/24), Developmental Disability Program Adaptive Supports Screening Results.
- CDCR Form 200-A (01/24), Developmental Disability Program Adaptive Support Log - Housing Unit.
- CDCR Form 200-B (01/24), Developmental Disability Program Adaptive Support Log - Work/School.
- CDCR Form 0201 (01/24), Condemned Incarcerated Persons - Waiver of Developmental Disability Program Screening and Inclusion.

These forms are incorporated by reference in these proposed regulations. The department uses over 1,500 regulatory forms, and because of this, it would be unduly cumbersome, expensive, and impractical to print all the forms in Title 15. Therefore, department forms are incorporated by reference into Title 15 where appropriate. Copies of these forms are made available in these proposed regulations.

Additional forms are mentioned in the proposed regulations but are already adopted and incorporated by reference in Title 15. These forms are unchanged in this rulemaking, and are as follows:

The CDC Form 128-B (Rev. 4/74), General Chrono, has already been adopted in CCR, Title 15, and is carried over from regulations in existence prior to CCR, Title 15, and is unchanged.

The CDC Form 804 (08/00), Notice of Pending CDC-115, has already been adopted in CCR, Title 15, section 3313, and is unchanged.

The CDCR Form 115-MH-A (Rev. 12/15), Rules Violation Report: Mental Health Assessment, has already been adopted in CCR, Title 15, section 3317, and other various sections, and is unchanged.

The CDC Form 128-MH5 (Rev. 05/14), Mental Health Referral Chrono, has already been adopted in CCR, Title 15, section 3044, and other various sections, and is unchanged.

The CDCR Form 1824 (Rev. 09/17), Reasonable Accommodation Request, has already been adopted in CCR, Title 15, section 3486, and is unchanged.

The automated Classification Committee Chrono (Rev. 05/19) has already been adopted in CCR, Title 15, section 3375, and is unchanged.

The automated Restricted Housing Unit Placement Notice (RHUPN) (11/23) has already been adopted in CCR, Title 15, section 3344, and is unchanged.

DOCUMENTS RELIED UPON:

The department, in proposing amendments to these regulations, has relied upon the following court orders:

Clark vs. California, (N.D. Cal. 2002) No. C-96-1486-CRB; Finding of Fact and Conclusions of Law, September 16, 2010; and Remedial Plan (amended March 15, 2002)

Armstrong vs. California, (N.D. Cal. 1998) No. C 94-02307 and Remedial Plan (amended January 3, 2001)

SPECIFIC PURPOSE AND RATIONALE FOR EACH SECTION, PER GOVERNMENT CODE 11346.2(b)(1):

3000. Definitions.

Section 3000 is amended to include new definitions for: Adaptive Functioning Deficits, Adaptive Support Needs, Adaptive Support Services, Certificate of Attendance and Participation (CAP), Developmental Disability, Developmental Disability Program (DDP), Disability, Out-to-Medical, Predatory Case Factors, Qualified Inmate with a Disability, and

Reasonable Accommodations. These terms are used throughout the text and require defining in order to properly understand their meaning, roles, and responsibilities.

3004. Rights and Respect of Others.

Subsection 3004(c) is amended to prohibit inmates, parolees, and employees from subjecting other persons to any form of discrimination because of a disability, or other forms of discrimination prohibited by law. This is necessary to comply with state and federal disability laws. The term “physical or mental handicap” is replaced with language that is more inclusive for all types of disabilities.

3031. Neatness and Laundry Exchange.

Subsection 3031(a) is amended to add a comma after the words “work or program activities.” This change is necessary to provide correct punctuation.

New subsection 3031(b) is adopted to instruct staff to prompt and assist inmates in the DDP with neatness and laundry exchange as necessary, if indicated on the inmate’s automated CDCR Form 200-A, Developmental Disability Program Adaptive Support Log – Housing Unit. This language is necessary to ensure the adaptive support needs of inmates in the DDP are being addressed and met. This section incorporates by reference, the automated CDCR Form 200-A, (01/24), Developmental Disability Program Adaptive Support Log – Housing Unit, and a copy is provided in this rulemaking. This form lists the inmate in the DDP’s adaptive support needs and provides for staff to document their offering and providing of the inmate’s adaptive support services. The automated CDCR Form 200-A, Developmental Disability Program Adaptive Support Log – Housing Unit is located in SOMS; however, it is printed out by staff and the information is entered manually by staff onto the form. This is because any staff member that provides inmates in the DDP with adaptive support services is required to document the provision on the Adaptive Support Log. Given that all staff members do not have access to SOMS, printing the log and completing it manually is the most effective method of documentation.

Existing subsection 3031(b) is renumbered to 3031(c) to accommodate a new subsection but is otherwise unchanged.

New subsection 3031(d) is adopted to allow for inmates with special clothing needs, including those with medical or disability needs, to make adjustments to the laundry exchange limits, on a case-by-case basis. This language is necessary to provide for special laundry circumstances that may exist for these types of inmates, and to ensure equal access to programs, services, activities, and non-discrimination for all inmates.

3040. Participation.

Subsection 3040(a) is amended to clarify that CDCR’s policy pertaining to inmate participation in programs, services, and activities is to ensure equal access to all inmates, regardless of a disability. The term “able-bodied” is deleted, and language is revised to

reference more appropriately those meeting the qualification for medically disabled, per section 3044.1(d)(2)(B). Additionally, new language specifies that inmates shall not be denied an assignment solely on the basis of their disability as long as they, with or without a reasonable accommodation, meet the essential eligibility requirements for participation. These revisions are necessary to ensure equal access, and to comply with state and federal disability laws.

Subsection 3040(f) is amended to add language stating that inmates shall not be removed due to their disability if they are able to complete the essential functions of the job, with or without reasonable accommodation. This language is necessary to ensure non-discrimination of inmates in the DDP by ensuring program decisions or exclusions are not made based solely on an inmate's DDP status.

3041. Performance.

New subsection 3041(b) is adopted to add language stating that inmates in the DDP may require prompts or reminders to attend their assignments. This language is necessary to ensure equal access for inmates in the DDP, and to comply with federal disability laws and the agreements between CDCR and the courts, namely the *Clark Remedial Plan*.

New subsection 3041(f) is adopted to afford inmates in the DDP with a reasonable accommodation for any work or program assignment, based upon their adaptive supports for their identified disability, so long as the assignment does not meet any of the criteria for medically disabled under section 3044.1(d)(2)(B). This language is necessary to ensure inmates with a disability have equal access to programs, services, and activities.

New subsection 3041(g) is adopted to specify that removal of an inmate in the DDP from a program assignment shall be done on a case-by-case basis as outlined in sections 3041.1(e), 3044.1(d)(2)(B), and 3376.2(e). This language is necessary to ensure the suitability and appropriateness of a program for an inmate in the DDP, and to ensure the safety of all inmates in a program.

3041.1. Paid Inmate Work/Training Assignment Criteria.

New subsection 3041.1(e) is adopted to extend the language in subsection 3041(g) to apply to paid work or training assignments. It also instructs staff to take into account a number of factors including, the inmate's ability to perform the essential functions of the program with or without a reasonable accommodation, the inmate's misbehavior, or failure to work as directed. This language is necessary to ensure non-discrimination of inmates in the DDP by ensuring program decisions or exclusions are not made based solely on an inmate's DDP status.

3044.1 Special Assignments.

New subsection 3044.1(d)(2)(B) is amended to remove language referring to any

“assigned work, academic, Career Technical Education program, or other such program activity,” replacing it with “assigned work or program” to include a broader definition, consistent with the *Armstrong* and *Clark* Remedial Plans, for areas impacted by “medically disabled.” This will provide compliance with the federal disability laws and the *Armstrong* and *Clark* Remedial Plans.

3120. Inmate Library Requirements.

New subsection 3120(d) is adopted to direct library staff to provide inmates in the DDP with an orientation for the law library and other library services within 30 calendar days of the inmate’s arrival at an institution. This language is necessary to ensure inmates with a disability are provided timely library orientation. The 30 calendar days establishes a reasonable amount of time for library staff to complete orientation, while ensuring inmates with a developmental disability are afforded appropriate accommodations to access and benefit from library services.

New subsection 3120(e) is adopted to direct staff to ensure inmates with a disability, including inmates with a communication need, are provided the necessary assistance to access various library services. This language is necessary to ensure equal access for inmates in the DDP, and to comply with federal disability laws and the agreements between CDCR and the courts, namely the *Clark* Remedial Plan.

New subsection 3120(f) is adopted to specify that staff are not to provide legal advice or conduct legal research. Staff are directed, when necessary, to assist inmates with a disability impacting their ability to communicate, with the completion of the letter to the court requesting assistance due to their developmental disability. This language is necessary to ensure staff are aware of their requirement to assist inmates in the DDP with the letter to the court, and to clarify staff’s role is to assist without giving legal advice.

New subsection 3120(g) is adopted to specify that the inmate’s letter to the court should include the inmate’s claim that they have a disability that makes it difficult to read, write, or understand the process or legal material regarding the case. This language is necessary to ensure staff are aware of the type of assistance to provide to inmates in the DDP with their letter to the court.

3192. Possession and Exchange.

Section 3192 initial paragraph is renumbered to 3192(a) for consistency with the CCR, clarity, and easier reference, but is otherwise unchanged.

New subsection 3192(b) is adopted to instruct staff to meet privately with inmates in the DDP with identified potential victimization concerns, to query for possible victimization concerns, including but not limited to theft or destruction of property, manipulation, pressuring, and undue influence regarding their property. This language is necessary to provide for safety and security of inmates in the DDP, and to comply with federal disability laws and the agreements between CDCR and the courts, namely the *Clark* Remedial

Plan.

New subsection 3192(c) is adopted to specify that staff shall meet with the inmate privately and as frequently as listed on their automated CDCR Form 200-A, Developmental Disability Program Adaptive Support Log - Housing Unit. The CDCR Form 200-A is incorporated by reference in this section, and a copy is provided in this rulemaking. This language is necessary to help staff detect and combat any potential victimization concerns involving inmates in the DDP, and to comply with federal disability laws and the agreements between CDCR and the courts, namely the *Clark Remedial Plan*.

3220. Recreational and Physical Education Program Participation.

Subsection 3220(a) is amended to ensure that all inmates, regardless of disability, are afforded reasonable accommodations to participate in recreational and physical education programs under safe and secure conditions. Additionally, a minor grammatical revision is made to remove the “/” and replace with the word “or,” for better specificity and consistency within the CCR. This language is necessary to ensure inmates with a disability have equal access to programs, services, and activities.

3269. Inmate Housing Assignments.

New subsection 3269(b)(20) is adopted to add “Participation in the Developmental Disability Program” to the list of factors that the screening authority shall consider when completing an Initial Housing Review. This language is necessary to ensure appropriate housing for inmates in the DDP.

Subsection 3269(i) is amended to add language for an inmate in the DDP’s refusal of a housing assignment. For these situations, staff shall follow the direction set forth in section 3312.1(b). This language is necessary to ensure equal access for inmates in the DDP, and to comply with federal disability laws and the agreements between CDCR and the courts, namely the *Clark Remedial Plan*.

3269.5. Developmental Disability Program Housing.

New subsection 3269.5(a) is adopted to direct staff to make informed and sound custody and classification decisions for inmates in the DDP, especially when there may be circumstances that put the DDP inmate at risk. This language is necessary to ensure appropriate placement for inmates in the DDP, and to comply with federal disability laws and the agreements between CDCR and the courts, namely the *Clark Remedial Plan*.

New subsection 3269.5(b) is adopted to establish that Classification and Parole Representatives (C&PR) or Classification Staff Representatives (CSR) shall review inmates in the DDP for endorsement to a designated DDP facility appropriate for the inmate’s DDP designation level, within 14 days working days of designation or change in case factors, including change in DDP designation. Based on the *Clark Remedial Plan*,

it was determined that 14 days is the amount of time necessary for staff to complete any processing and ensure that inmates in the DDP are promptly endorsed to their designated facility. Unless overriding factors exist (medical or mental health reasons), inmates in the DDP are housed at DDP-designated institutions, which provide additional resources to inmates in the DDP through additional staffing. A C&PR and a CSR are the staff persons who review and approve inmates for transfer between CDCR institutions. This language is necessary to comply with federal disability laws and the agreements between CDCR and the courts, namely the *Clark* Remedial Plan, and to ensure inmates in the DDP are appropriately placed.

New subsection 3269.5(c) is adopted to establish that if an inmate's DDP designation changes, the Mental Health Clinician shall update the inmate's identified adaptive supports, as applicable, and the inmate shall be referred to the C&PR or CSR for review and endorsement to a designated DDP institution or facility appropriate for the inmate's new DDP designation. This new section provides safeguards to prevent an inmate in the DDP from being housed with an inmate with a history of sexual or predatory behavior that has not met the minimum exclusionary periods identified in subsection 3269.5(h). This language is necessary to comply with federal disability laws and the agreements between CDCR and the courts, namely the *Clark* Remedial Plan, and to prevent actual and potential victimization of inmates in the DDP.

New subsection 3269.5(d) is adopted to establish that custody or classification staff shall screen all inmates prior to being housed in a DDP-designated housing unit. Additionally, custody staff shall screen all inmates for single-cell status and compatibility as part of the Initial Housing Review (IHR), during the intake process at receiving institutions, and prior to housing. Further, classification staff shall review the IHR for single-cell status and housing restrictions during initial classification. This language is necessary to comply with federal disability laws and the agreements between CDCR and the courts, namely the *Clark* Remedial Plan, and to ensure appropriate housing of inmates in the DDP.

New subsection 3269.5(e) is adopted to establish that in specialized housing areas (Restricted Housing Units, Enhanced Outpatient Program, Correctional Treatment Center, or Reception Centers) custody or classification staff shall screen potential inmates that may be considered for sharing a living area with an inmate in the DDP, to ensure that inmates with predatory case factors that have not met the established minimum exclusionary period outlined in subsection 3269.5(h) are not housed with inmates in the DDP with victimization concerns. This language is necessary to ensure the safety and security of inmates in the DDP, and to comply with agreements between CDCR and the courts, namely the *Clark* Remedial Plan.

New subsections 3269.5(f) through (f)(4) are adopted to establish the predatory case factors that preclude an inmate from being assigned to DDP-designated housing areas, unless they have met the minimum exclusionary periods identified in subsection 3269.5(h). This language is necessary to ensure the safety and security of inmates in the DDP, and to comply with federal disability laws and the agreements between CDCR and

the courts, namely the *Clark* Remedial Plan.

New subsection 3269.5(g) is adopted to provide that additional exclusionary factors for housing inmates in DDP housing may be determined on a case-by-case basis. This language is necessary to allow for extraordinary circumstances which may be present and could potentially threaten the safety and security of those inmates in the DDP.

New subsection 3269.5(h) is adopted to establish the minimum exclusionary periods that shall apply to predatory case factors that shall be considered when determining whether an inmate may be able to be housed with an inmate in the DDP. The department established the minimum exclusionary periods through negotiations and agreements with internal and external stakeholders. Inmates in the DDP are often prone to victimization, pressuring, teasing, peer pressure, and theft. The department's preclusion of inmates with predatory case factors in DDP-designated housing areas is intended to create a safe environment for inmates in the DDP.

New subsections 3269.5(i) through (i)(2) are adopted to establish language precluding inmates who have any of the identified predatory case factors specified in subsection 3269.5(f), and who have not met the established exclusionary period in subsection 3269.5(h), from being housed in a designated DDP building, unit, or wing; or sharing a non-DDP designated cell, bay, wing, or pod in a dorm with an inmate in the DDP that has victimization noted on their automated CDCR Form 128C-2 (Rev. 01/24), Developmental Disability Program Adaptive Supports Screening Results. This section incorporates by reference the automated CDCR Form 128C-2 (Rev. 01/24), Developmental Disability Program Adaptive Supports Screening Results, which is located in SOMS. A copy of this form is made available in this rulemaking. Language in these subsections is necessary to ensure the safety and security of inmates in the DDP, especially those who may have victimization concerns.

New subsection 3269.5(j) is adopted to clarify the requirements for housing inmates in the DDP with any of the predatory case factors specified in subsection 3269.5(f) who have not met the established exclusionary period in subsection 3269.5(h), or who have victimization concerns noted on their Adaptive Support Form, in non-designated DDP housing areas. This language is necessary to ensure the safety and security of inmates in the DDP.

New subsection 3269.5(k) is adopted to establish that an inmate in the DDP with any of the existing predatory case factors specified in subsection 3269.5(f) who has not met the established exclusionary period in subsection 3269.5(h), shall be excluded from housing with inmates in the DDP who are prone to victimization. This language is necessary to ensure the safety and security of inmates in the DDP.

New subsections 3269.5(l) through (l)(2)(B) are adopted to establish that custody staff shall conduct an assessment to determine if an inmate meets predatory criteria, when reviewing for double-celling eligibility, and they shall document their determination on the automated Classification Committee Chrono, and the Initial Housing Review. Language

also specifies the documents that staff shall review to make their determination. The CDC Forms mentioned in this section are already adopted and incorporated by reference in Title 15, and are unchanged in this rulemaking, therefore no copies of these forms are provided in this rulemaking. This language is necessary to ensure the safety and security of inmates in the DDP, by ensuring that those inmates with predatory case factors that have not met the exclusionary periods are not housed with inmates in the DDP.

New subsection 3269.5(m) is adopted to provide that inmates in the DDP shall be housed in designated DDP housing facilities or areas unless overriding medical, mental health, or predatory case factors exist, as these case factors take precedent over placement in a DDP designated setting. Additionally, language in this subsection provides that separate designated DDP housing areas are not required for inmates housed in medical or mental health settings, as long as the predatory case factors referenced in subsection 3269.5(f) have been reviewed, and the minimum exclusionary periods referenced in subsection 3269.5(h) have been met. This subsection also provides that once the overriding case factors have been addressed and the inmate in the DDP no longer requires housing in a specialized setting, the inmate shall be endorsed and transferred to a DDP designated institution or facility, as described in subsection 3269.5(b). This language is necessary to ensure appropriate housing of inmates in the DDP.

New subsection 3269.5(n) is adopted to establish that inmates in the DDP housed in a non-DDP-designated housing area because of medical, mental health, or predatory case factors, shall be provided required adaptive support services. This language is necessary to ensure that inmates in the DDP are provided their required adaptive support services, and to comply with federal disability laws and the agreements between CDCR and the courts, namely the *Clark Remedial Plan*.

3303. Safety and Security.

Subsection 3303(a)(4) is amended to provide that institutions shall adopt local operating procedures to ensure inmates with disabilities are safely evacuated during an emergency. This language is necessary to ensure the safety and security of inmates with disabilities at each institution.

3312.1. Disciplinary Methods for Inmates in the Developmental Disability Program.

New subsection 3312.1(a) is adopted to establish that inmates in the DDP are subject to discipline as provided within Subchapter 4, Article 5, Inmate Discipline, however throughout the disciplinary process, staff must take into consideration each inmate's adaptive support need(s) as it relates to the misconduct. This will provide for equality for inmates in the DDP in the disciplinary process who, may be disadvantaged due to their disability, and is necessary to comply with federal disability laws and the agreements between CDCR and the courts, namely the *Clark Remedial Plan*.

New subsection 3312.1(b) is adopted to set forth disciplinary methods for minor

misconduct of inmates in the DDP. Staff shall utilize verbal counseling commensurate with the inmate's specific adaptive support need(s). This language will provide for equality for inmates in the DDP and is necessary to comply with federal disability laws and the agreements between CDCR and the courts, namely the *Clark* Remedial Plan.

New subsections 3312.1(c) through (c)(8) are adopted to set forth the disciplinary requirements for reporting employees, hearing officials, and Chief Disciplinary Officers in providing relevant adaptive support(s) to inmates in the DDP if circumstances at the time of the alleged misconduct allow staff the opportunity to utilize verbal counseling; determining whether or not the inmate's developmental disability contributed to the alleged misconduct; and in assessing penalties when adjudicating a Rules Violation Report for inmates in the DDP. The CDCR Form 115-MH-A (Rev. 12/15) is incorporated by reference in this section, however it was previously adopted in Title 15, sections 3317 and 3337, and is unchanged in this rulemaking, therefore no copy of this form is provided in this rulemaking. This language will provide equality for inmates in the DDP and is necessary to comply with federal disability laws and the agreements between CDCR and the courts, namely the *Clark* Remedial Plan.

New subsection 3312.1(d) is adopted to establish that the ADA Coordinator at DDP-designated institutions shall review Rules Violation Reports (RVRs) issued to inmates in the DDP at least monthly to identify any patterns of misbehavior that may be related to the inmate's developmental disability. If the ADA Coordinator determines the patterns of misbehavior may be related to the inmate's developmental disability, they shall refer the inmate to the DDP Clinician or Interdisciplinary Support Team for review of appropriateness of all or any of the following: the inmate's current DDP designation; classification; or program placement. The DDP Clinician is a mental health staff person assigned to DDP-designated prisons. There is at least one DDP Clinician at each designated prison. This language is necessary to ensure that the adaptive support needs of inmates in the DDP are being appropriately identified and addressed.

New subsection 3312.1(e) is adopted to establish that ongoing behavioral problems displayed by inmates in the DDP are brought to the attention of the designated DDP Clinician, or their designee, who will assess the causes of the behavior and create a behavioral modification treatment plan, when appropriate. This language is necessary to appropriately assist inmates in the DDP that may have ongoing behavioral problems, and to correct these types of problems.

3318. Assistance to Inmates for Serious Rule Violations.

Subsection 3318(b) is amended to establish that the assignment of a Staff Assistant is mandatory for inmates in the DDP. This language is necessary to comply with federal disability laws and the agreements between CDCR and the courts, namely the *Clark* Remedial Plan, and to ensure equity for inmates in the DDP.

Subsection 3318(b)(1) is amended to capitalize the term "Staff Assistant" for correction and consistency purposes.

New subsections 3318(b)(2) through (b)(2)(C) are adopted to instruct the Staff Assistant to provide inmates in the DDP with assistance, when necessary, including: reading relevant documents, completing necessary paperwork to prepare for the Rules Violation Report hearing, being present at the disciplinary hearing and at all interviews related to the disciplinary process including any waiver of the Investigative Employee, being present during the Investigative Employee interview with the DDP inmate, consulting with the DDP inmate and confirming their decision if they decide to decline postponement of the RVR hearing pending the status of the referral to the District Attorney for possible prosecution, and providing effective communication to the extent possible, to assist the inmate in understanding the decisions reached. This section incorporates by reference the CDCR Form 128C-2 (Rev. 01/24), and a copy is provided in this rulemaking. Language in this section is necessary to comply with federal disability laws and the agreements between CDCR and the courts, namely the *Clark* Remedial Plan, and to ensure equity for inmates in the DDP.

Subsections 3318(b)(2) through (b)(4) are renumbered (b)(3) through (b)(5) due to the adoption of new subsection 3318(b)(2), and are amended to capitalize the term “Staff Assistant” for correction and consistency purposes, and to specify that the Staff Assistant shall keep confidential any sensitive information the inmate discloses concerning the charges for which the Staff Assistant was assigned unless the inmate consents to disclosure or if disclosure is required by law or as described in section 3318(b)(4). Although this language applies to all inmates, inmates in the DDP make up a large portion of the population requiring the assignment of a Staff Assistant. Therefore, it is necessary to provide better clarity and understanding regarding the Staff Assistant’s role and responsibilities when assigned to an inmate.

3335.5. Restricted Housing for Inmates in the Developmental Disability Program.

New subsection 3335.5(a) is adopted to set forth procedures that shall apply to inmates with developmental disabilities in restricted housing units. This language is necessary to comply with federal disability laws and the agreements between CDCR and the courts, namely the *Clark* Remedial Plan.

New subsection 3335.5(b) is adopted to provide that inmates in the DDP shall be provided adaptive support services, regardless of their housing setting. Additionally, mental health staff shall interview an inmate in the DDP who is placed in a restricted housing unit within 24 hours of placement and notify custody staff if any changes to the inmate’s adaptive support services are required. This language is necessary to ensure that inmates in the DDP are provided adaptive support services, and to comply with federal disability laws and the agreements between CDCR and the courts, namely the *Clark* Remedial Plan.

New subsection 3335.5(c) is adopted to provide that the assigned Mental Health Clinician or designee, shall monitor all inmates in the DDP who are placed in a restricted housing unit, on a weekly basis, to determine if the inmate’s prescribed adaptive support

services are adequate. This language is necessary to ensure that DDP inmates' adaptive support needs are consistently monitored. In addition, this language is necessary to comply with federal disability laws and the agreements between CDCR and the courts, namely the *Clark* Remedial Plan.

New subsection 3335.5(d) is adopted to provide that Mental Health Services shall be contacted if the inmate's condition deteriorates. The referral shall be documented on the CDCR Form 128-MH5, Mental Health Referral Chrono, identifying the specific reason(s) for the referral, including but not limited to recommendations for alternative placement, and adaptive support services. The CDCR Form 128-MH5 (Rev. 05/14) is already adopted and incorporated by reference in Title 15, section 3044, and other various sections, and is unchanged in this rulemaking, therefore no copy is provided in this rulemaking. Language in this subsection is necessary to ensure the health and safety of inmates in the DDP, and to comply with federal disability laws and the agreements between CDCR and the courts, namely the *Clark* Remedial Plan.

New subsection 3335.5(e) is adopted to provide that a psychiatric technician or designee, shall make contact with each inmate in the DDP in a restricted housing unit, on a daily basis, to monitor the inmate's adaptive functioning. This language is necessary to ensure the health and safety of inmates in the DDP in a restricted housing unit, and to comply with federal disability laws and the agreements between CDCR and the courts, namely the *Clark* Remedial Plan.

3344. Assistance to Inmates for Restricted Housing Classification Hearings.

Subsection 3344(a) is amended to specify that for inmates in the DDP, a Staff Assistant is required to be present during the administrative review of the Restricted Housing Unit Placement Notice, and their presence must be documented, when required by CCR 15, Division 3, Chapter 1, Subchapter 4, Article 7. This language is necessary to ensure equity for inmates in the DDP, and to comply with federal disability laws and the agreements between CDCR and the courts, namely the *Clark* Remedial Plan

Subsection 3344(b)(4) is amended to specify that inmates in the Developmental Disability Program (DDP) with a DDP designation of DD1, DD2, or DD3 shall be assigned a Staff Assistant. This language is necessary to comply with federal disability laws and agreements between CDCR and the courts, namely the *Clark* Remedial Plan.

Subsection 3344(e)(6) is amended to clarify that the Staff Assistants are to keep confidential any "sensitive" information that the inmate discloses concerning the charges for which the Staff Assistant was assigned. This language is added to differentiate what information a Staff Assistant should disclose. Additionally, language is added to further specify: "unless the inmate consents to disclosure or if disclosure is required by law or as described in 3344(e)(8)." This language is necessary for clarity, and to comply with state and federal laws and the agreements between CDCR and the courts, namely the *Clark* Remedial Plan, and to ensure equity for inmates in the DDP.

New subsections 3344(f) through (f)(3) are adopted to provide that, in addition to the duties set forth in subsections 3340(e)(1)-(12), the Staff Assistant shall also provide inmates in the DDP with assistance, including reading relevant documents and completing necessary and related paperwork to prepare for the classification hearing, being present at the classification hearing and all interviews related to the classification process, and providing effective communication to assist the inmate in understanding the decisions reached. This section incorporates by reference CDCR Form 128C-2 (Rev. 01/24), and a copy is provided in this rulemaking. This language is necessary to ensure equity for inmates in the DDP, and to comply with federal disability laws and the agreements between CDCR and the courts, namely the *Clark* Remedial Plan.

Existing subsections 3344(f) through (l)(8) are renumbered (g) through (m)(8), due to the renumbering of this section, but are otherwise unchanged.

New Article 9.1 is titled Developmental Disability Program, and new sections 3369.5 through 3369.13 are adopted.

3369.5. Developmental Disability Program: General Policy.

New subsection 3369.5(a) is adopted to provide the general policy and objectives of the Developmental Disability Program. Ensuring equal access to all departmental programs, services, and activities to inmates in the DDP is consistent with and promotes the department's commitment to providing equity, inclusivity, and non-discrimination for all inmates. Additionally, establishment of the DDP is necessary to comply with federal disability laws and the agreements comply with state and federal disability laws and the agreements between CDCR and the courts, namely the *Clark* Remedial Plan.

3369.6. Reception Center Screening and Processing.

New subsections 3369.6(a) through (e) are adopted to establish the process for Reception Center screening and processing of inmates in the DDP, and to provide guidance to staff during Reception Center screening and processing. Condemned inmates (those serving a death sentence) will not be screened for potential inclusion in the DDP when a CDCR Form 0201 (01/24), Condemned Incarcerated Persons – Waiver of Developmental Disability Program Screening and Inclusion, signed by both the inmate and their legal counsel, has been received by CDCR within 30 calendar days of the inmate's arrival at a Reception Center. The CDCR Form 0201 is incorporated by reference in these regulations, and a copy is provided in this rulemaking. The CDCR Form 0201 is necessary to provide a choice for condemned inmates that may feel that DDP screening could adversely impact their pending or future appeal of their death penalty case. The 30-calendar day timeframe allows sufficient time for the inmate and their appellate counsel to provide the completed waiver, if needed, without substantially delaying the identification process and providing services to the inmate when indicated. If at any time the condemned inmate with the waiver of DDP screening is no longer condemned, or serving a death sentence, or their death sentence has been overturned or commuted and their sentence is not subject to further appeals, CDCR shall screen the

inmate pursuant to terms set forth in subsection 3369.6(a). These provisions are required to ensure timely processing of inmates in Reception Centers and to ensure the department continues to comply with legal mandates to identify and accommodate CDCR inmates with developmental disabilities. Inmates that return to CDCR on a new term will not have a record of their previous DDP designation, therefore, it is necessary to re-screen the inmate to determine if they have a developmental disability. If an inmate in the DDP paroled and returns to CDCR five years or more from the date of their last term, it is possible that their previous diagnosis may have changed. Re-screening the inmate is required to assess if inclusion in the DDP is appropriate. Inmates in the DDP at designated institutions are afforded additional resources. The orientation process describes those resources and ensures the inmate in the DDP is aware of the programs and processes of the institution. The 30-calendar day timeframe for DDP orientation was determined by the *Clark* Remedial Plan and provides a timely and appropriate timeframe to provide orientation for DDP inmates. Documentation on the CDC Form 128-B, General Chrono, is required to provide proof of practice and show compliance with departmental policy and court mandates. The CDC Form 128-B, General Chrono, is unchanged in this rulemaking, and is already adopted and incorporated by reference in Title 15 and is carried over from regulations that existed prior to the existence of Title 15, therefore no copy is provided in this rulemaking. The CDCR Form 200-A (01/24) is incorporated by reference in this section, and a copy is provided in this rulemaking. Language in these subsections is necessary to comply with federal disability laws and the agreement between CDCR and the courts, namely the *Clark* Remedial Plan.

3369.7. Developmental Disability Program Criteria and Categories.

New subsections 3369.7(a) through (b)(5) are adopted to establish inclusion criteria for the DDP, and the designated categories that inmates in the DDP may be placed into based on screening results by mental health staff. Additionally, language in this subsection clarifies the exclusion of inmates from the DDP when their symptoms are similar to those with developmental disabilities, but the cause is related to other factors, and they are being accommodated with other programs. The categories list the qualifying criteria for being placed into the specified categories. The categories are listed as: Negative Current Finding (NCF); Negative Disability Designation (NDD); DD1; DD2; and DD3. Only those inmates that are categorized as DD1, DD2, or DD3 are placed into the DDP. This language is necessary to establish categories that are included in the DDP, and to comply with federal disability laws and the agreements between CDCR and the courts, namely the *Clark* Remedial Plan.

3369.8. Extended Reception Center Stay for Inmates in the Developmental Disability Program.

New subsections 3369.8(a) through (c)(4) are adopted to establish the process to transfer an inmate in the DDP out of a Reception Center to a designated DDP institution or facility, and to provide the extension of privileges in a Reception Center when timeframes are exceeded, and the inmate is detained due to non-disability related circumstances. This section sets forth timelines for compliance, which were determined

based on the *Clark* Remedial Plan. The department's goal is to process inmates in the DDP out of a Reception Center expeditiously so that they may receive all of the appropriate adaptive support services they need at their designated DDP institution. In circumstances where an inmate in the DDP is not able to process out of a Reception Center expeditiously, the department is committed to ensure that these inmates still receive the adaptive support services they need, as well as any extended stay privileges that they may be entitled to. The CDCR Form 200-A (01/24) is incorporated by reference in this section, and a copy is provided in this rulemaking. The automated Classification Committee Chrono (Rev. 05/19) is incorporated by reference in this section but is unchanged in this rulemaking and has already been adopted and incorporated by reference in Title 15, section 3375, therefore no copy is provided in this rulemaking. Language in these subsections is necessary to comply with federal disability laws and the agreements between CDCR and the courts, namely the *Clark* Remedial Plan.

3369.9. Identification of Developmental Disability Program Inmates within the Existing Population.

New subsections 3369.9(a) through (a)(2) are adopted to provide a means to refer inmates for consideration for placement into the DDP at any time, even if they were not included in the DDP during the initial screening process. By allowing inmates to self-refer, in addition to any staff member referring an inmate to the Mental Health Program, this provides for equity and non-discrimination for those inmates who feel they may meet the criteria for the DDP and is intended to ensure that those who require DDP services receive them. Language is also adopted to provide that if an inmate's adaptive support(s), listed on their automated CDCR Form 128C-2 (Rev. 01/24), Developmental Disability Program Adaptive Supports Screening Results, do not match their current level of functioning, staff shall document their observation on a CDCR Form 128-MH5 (Rev. 05/14), Mental Health Referral Chrono and submit the CDCR Form 128-MH5 to the Mental Health Program. The CDCR Form 128-MH5 (Rev. 05/14), Mental Health Referral, is unchanged in this rulemaking, and is already adopted and incorporated by reference in section 3044 and other various sections, therefore no copy is provided in this rulemaking. The CDCR Form 1824 (Rev. 09/17), Reasonable Accommodation Request, is unchanged in this rulemaking, and is already incorporated by reference in section 3486, therefore no copy is provided in this rulemaking. The CDCR Form 128C-2 (Rev. 01/24) is incorporated by reference in this section, and a copy is provided in this rulemaking. Language in this section is necessary to ensure equity for inmates that may not have been included in the DDP during the initial screening process if circumstances have changed, and to comply with federal disability laws and the agreements between CDCR and the courts, namely the *Clark* Remedial Plan.

3369.10. Adaptive Support Services.

New subsections 3369.10(a) through (d)(1) are adopted to specify that mental health staff, when placing an inmate into the DDP, will identify the specific adaptive support services the inmate may require. Staff are required to provide inmates in the DDP adaptive support services and are also required to document that they offered or provided

(along with the outcome) adaptive support services to inmates in the DDP. The adaptive support services provided shall be consistent with those indicated by mental health staff on the automated CDCR Form 128C-2, Developmental Disability Program Adaptive Supports Screening Results, and are also identified on the automated CDCR Form 200-A, Developmental Disability Program Adaptive Support Log – Housing Unit, and the CDCR Form 200-B, Developmental Disability Program Adaptive Support Log – Work/School (Adaptive Support Logs). This section incorporates by reference the automated CDCR Form 200-B (01/24), Developmental Disability Program Adaptive Support Log – Work/School, and a copy is provided in this rulemaking. Like the CDCR Form 200-A, the CDCR Form 200-B, is located in SOMS, and it is printed out for staff to enter information on the form manually. This is because any staff member that provides inmates in the DDP with adaptive support services is required to document the provision on the Adaptive Support Log. Given that all staff members do not have access to SOMS, printing the log and completing it manually is the most effective method of documentation. Adaptive supports are provided to ensure that inmates in the DDP can equally access programs, services, and activities. Additionally, they promote independent functioning, and minimize the possibilities of victimization to the inmate. A supervisor is required to conduct a weekly review of the inmate's Adaptive Support Log, to ensure staff are providing the inmate's adaptive support services as listed, and at the frequency indicated, on the Adaptive Support Log. The section also specifies that staff shall provide assistance to inmates in the DDP on a case-by-case basis to ensure that those who have difficulty reading, communicating in writing, or both, will be provided reasonable assistance with completing and reading departmental documents. Additionally, staff shall ensure effective communication is used with inmates in the DDP for verbal announcements. This section incorporates by reference CDCR Forms 128C-2 (Rev. 01/24), and 200-A (01/24), and copies are provided in this rulemaking. Language in this section is necessary to ensure equity, inclusivity, and non-discrimination of inmates in the DDP, and to comply with federal disability laws and the agreements between CDCR and the courts, namely the *Clark* Remedial Plan.

3369.11. Interdisciplinary Support Team.

New subsections 3369.11(a) through (f)(1) are adopted to establish an Interdisciplinary Support Team (IDST) at institutions to review the inmate in the DDP's classification, custody, program, and adaptive support services. Text specifies the composition of the multi-disciplinary team, and the required minimum CDCR staff that shall be included in the IDST. The IDST shall also identify and confirm specific adaptive support services are being provided and make recommendations to clinical staff, custody staff, or both, to address any identified gaps, including but not limited to modifications to adaptive supports services, changes to an inmate's DDP designation, or both, as appropriate. The initial IDST is the first committee conducted by the IDST and is used to determine the program needs of an inmate in the DDP. The initial IDST is completed within 14 calendar days of the inmate's arrival at their institution or after a DDP designation change. This time period was determined to be the amount of time necessary for staff to arrange for this committee meeting and is based on the *Clark* Remedial Plan. During the initial IDST committee meeting, staff explain to the inmate in the DDP that

institutional staff will assist or provide their adaptive supports at the institution where the inmate will be housed. Timeframes for the frequency of IDST reviews are established, based upon the inmate's DDP designation, and language further identifies that the IDST may review DDP cases more frequently, if needed. All decisions, actions, and recommendations by the IDST shall be documented on the automated Classification Committee Chrono, including the names of the IDST participants. The automated Classification Committee Chrono is unchanged in this rulemaking and has already been adopted and incorporated by reference into Title 15, section 3375, therefore no copy is provided in this rulemaking. The CDCR Form 128C-2 (Rev. 01/24) is incorporated by reference in this section, and a copy is provided in this rulemaking. Language in this section is necessary to provide equity for DDP inmates, and to comply with federal disability laws and the agreements between CDCR and the courts, namely the *Clark Remedial Plan*.

3369.12. Inmate Work and Program Assignments.

New subsections 3369.12(a) through (d) are adopted to reinforce the expectation that all inmates with disabilities are entitled to equal access to work and programs as inmates without disabilities. An inmate's disability or DDP designation shall not be the sole basis for precluding a work or program assignment. This new section also extends to Career Technical Education and academic assignments. Certified educational staff at designated DDP facilities shall be responsible for implementing recommended reasonable accommodations. This language is necessary to provide equity, inclusivity, and non-discrimination of inmates in the DDP, and to comply with federal disability laws and the agreements between CDCR and the courts, namely the *Clark Remedial Plan*.

3369.13. Academic Assignments.

New subsections 3369.13(a) through (e)(1)(E) are adopted to provide student support during education assignments for inmates in the DDP. Language specifies that instructional staff shall have credentials issued by the California Commission on Teacher Credentialing, and that a minimum of one instructor at each designated DDP institution must have a Special Education Credential and be assigned as a Resource Specialist Program (RSP) teacher. Additionally, language identifies that notwithstanding reasonable circumstances for delay, a Student Study Team, comprised of the RSP teacher, classroom teacher, an education supervisor, and the inmate, shall meet within ten working days of an inmate's assessment and placement in an education program, and thereafter at least once annually for review and assessment of the inmate's placement. These timeframes were determined by the *Clark Remedial Plan*. The language specifies circumstances that may warrant delay of the Student Study Team meeting with an inmate in the DDP include, but are not limited to inmate refusal, modified programming at the institution, or situations that pose a threat or jeopardize the safety or security of the inmate, staff, the institution, or others. A teacher may request a team meeting whenever there are behavioral issues that must be addressed to prevent removal from the assignment. Further, this section specifies that all inmates in the DDP who have been assigned to education programs shall be assessed in reading grade level and math.

An Individually Tailored Education Plan (ITEP) shall be created for the inmate to establish goals, objectives, or accommodations, taking into consideration the individual's adaptive support needs, and will be reviewed at least every six months. The six-month timeframe for reviewing the inmate in the DDP's ITEP was determined based on the *Clark* Remedial Plan. Language also establishes the use of the Certificate of Attendance and Participation (CAP) for inmates in the DDP with severe cognitive disabilities. Inmates with severe cognitive disabilities may not make educationally expected progress on educational assessments and may not be benefitting from their assigned course. The CAP process allows for the inmate to be removed from courses that may be inappropriate for them and reassign them to an appropriate program (or a wait list if the program has a wait list) that will better benefit them, while still giving them recognition that they attended and participated in the course that may not have been appropriate for them. Eligibility criteria for the CAP is necessary to ensure equal treatment of inmates through a standardized process of inclusion. This process is consistent with common practice in public education. Additionally, language regarding the CAP process is necessary as some staff are unaware of this process and continually deny removing the inmate from education courses, which does not benefit the inmate. If the inmate's removal is denied and the inmate decides not to attend their education assignment, they may be subjected to disciplinary action. Language in this section is necessary to provide equity, inclusivity, and non-discrimination for inmates in the DDP, and to comply with federal disability laws and the agreements between CDCR and the courts, namely the *Clark* Remedial Plan.

3370. Case Records File and Unit Health Records Material – Access and Release.

New subsection 3370(f) is adopted to inform staff that an inmate's DDP status is to be kept confidential from other inmates, as inmates shall not have access to another inmate's DDP status. This language is necessary to ensure respect and confidentiality of inmates in the DDP, avoid victimization, and comply with federal disability laws and the agreements between CDCR and the courts, namely the *Clark* Remedial Plan.

3376.2. Classification of Inmates in the Developmental Disability Program.

New subsections 3376.2(a) through (e)(2) are adopted to correspond with classification procedures to assure that inmates in the DDP are not exposed to a significant risk of harm, abuse, or harassment, and that their needs are being addressed appropriately. Language outlines that committee staff shall review the inmate's housing needs and adaptive supports for appropriateness based on the inmate's current case factors and current adaptive functioning. Additionally, the inmate's work supervisors and school educators shall be notified of the inmate's adaptive support needs, which is necessary to ensure that all of the inmate's adaptive support needs are being met during work or school time periods. A current list of all the inmate's adaptive support needs is provided to the work and school locations because the CDCR Form 200-B, Developmental Disability Program Adaptive Support Log – Work/School, only lists the adaptive support needs specific to work and school. The classification process will also address the needs of certain inmates in the DDP with victimization concerns and prevent inmates with a history of predatory case factors from being housed with inmates in the

DDP, as addressed in subsections 3269.5(e) through 3269.5(h). This section incorporates by reference CDCR Forms 200-B (01/24), and 128C-2 (Rev. 01/24), and copies are provided in this rulemaking. Language further outlines that inmates in the DDP may be considered for removal from specific educational programming if their circumstances demonstrate they are unable to benefit from such and sets forth the process for removal. Language in this section is necessary to provide for the health, welfare, safety, and equality of inmates in the DDP, and to comply with federal disability laws and the agreements between CDCR and the courts, namely the *Clark* Remedial Plan.