

 U.S. Department of Homeland Security U.S. Immigration and Customs Enforcement [Redacted]	<b>Policy Number</b> [Redacted]	<b>Pages</b> 11
<b>Related Standards/Information</b> [Redacted] NDS 2019 (Detention Standards) [Redacted]	<b>Subject</b> Disability Identification, Assessment, and Accommodation	

## I. POLICY

This detention standard (and federal law) requires that facilities housing ICE/ERO detainees act affirmatively to prevent disability discrimination. It outlines the necessary processes to ensure detainees with a disability will have an equal opportunity to participate in, access, and enjoy the benefits of the facility’s programs, services, and activities. Such participation will be accomplished in the least restrictive and most integrated setting possible, through the provision of reasonable accommodations, modifications, and/or auxiliary aids and services, as necessary, and in a facility that is physically accessible.

## II. PURPOSE

To provide the facility with guidelines for identifying detainees with disabilities, assessing the need for accommodations, and providing those accommodations to allow detainees with disabilities an equal opportunity to access, participate in, or benefit from the facility’s programs, services, and activities.

## III. PROCEDURAL GUIDE LINES

### A. Written Policy and Procedures, and Compliance Coordinator

#### 1. Reasonable Accommodation Policy

The facility shall develop written policy and procedures, including reasonable timelines, for reviewing detainees’ requests for accommodations related to a disability and for providing accommodations (including interim accommodations), modifications, and reassessments. These policies and procedures shall be consistent with the processes outlined in this standard.

#### 2. Disability Compliance Coordinator

The facility or public entity shall designate a Disability Compliance Coordinator to assist facility personnel in ensuring compliance with this standard and all applicable federal, state, and local laws related to accommodation of detainees with disabilities. The Disability Compliance Coordinator may be the Health Services Administrator, a member of the medical staff, or anyone with relevant knowledge, education, and/or experience; this role may be filled by the county, locality, or agency’s existing ADA coordinator. The Disability Compliance Coordinator must have sufficient authority and resources to perform these functions.

## **B. Identification**

A detainee may identify him- or herself as having a disability and/or request a reasonable accommodation at any point during detention. Detainees may submit a formal or informal (i.e., verbal or written) request for accommodations or assistance. Requests should be reviewed in context, and do not need to include the words “disability” or “accommodation” to be considered a request for accommodations. The facility shall also consider information submitted by a third party, such as an attorney, family member, or other detainee identifying a detainee with a disability or a detainee’s need for an accommodation.

Further, it is incumbent upon facility staff to proactively identify detainees with impairments that are open, obvious, and apparent. Identification of detainees with potential disabilities (i.e., impairments that are open, obvious, and apparent) may occur through medical or intake screenings, or through direct observation. Staff should be particularly vigilant for impairments that affect a detainee’s mobility or ability to communicate. Upon identifying a detainee with a potential disability, the facility shall review the need for any necessary accommodations pursuant to Section E below. The processes described in this standard apply to any detainee who has requested an accommodation or auxiliary aid or service, or who has otherwise been identified as potentially needing an accommodation.

## **C. Physical Accessibility and Most Integrated Setting Possible**

### **1. Physical Accessibility**

The facility shall comply with all applicable federal, state, and local laws and regulations related to the accessibility of safe and appropriate housing for detainees with disabilities. The facility will ensure that detainees with disabilities are able to physically access its programs, services, and activities. This includes, for example, ensuring detainees with disabilities can access telephones, as well as toileting and bathing facilities.

### **2. Most Integrated Setting**

Every detainee with a disability will be housed in a space that affords him or her safe, appropriate living conditions. Detainees with disabilities should be provided access to the facility’s programs and services in the least restrictive setting possible and the most integrated setting appropriate to the needs of the detainee with a disability.

Detainees with disabilities shall generally be permitted to keep assistive devices (including such aids as canes and crutches) with them at all times, including in general population. Placement apart from the general population due to security concerns related to the use of any such item must be based on individualized review, and the justification for the placement must be documented, whether the detainee is placed in an SMU, medical clinic, or elsewhere. The justification shall set forth the individualized assessment of the safety or security concern created by the assistive device that could not be eliminated or mitigated by modification of policies or procedures.

A detainee's disability or need for accommodations may not provide the sole basis for a decision to place the detainee in an SMU. An individualized assessment must be made in each case, and the justification for the placement documented.

#### **D. Effective Communication**

Throughout the facility's programs and activities, including at all stages of the reasonable accommodation process, the facility must take appropriate steps to allow for effective communication with detainees with disabilities to afford them an equal opportunity to participate in, and enjoy the benefits of, the facility's programs and activities. Steps to ensure effective communication may include the provision and use of auxiliary aids or services for detainees with vision, hearing, sensory, speech, and manual impairments, as needed. The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the individual detainee, the nature, length, and complexity of the communication involved, and the context in which the communication is taking place. In determining what types of auxiliary aids or services are necessary, the facility shall give primary consideration to the request of the detainee with a disability.

Use of other detainees to interpret or facilitate communication with a detainee with a disability may only occur in emergencies.

#### **E. Reasonable Accommodations Process**

The facility's process to appropriately accommodate a detainee with a disability will differ depending on the nature of the impairment or disability being addressed.

##### **1. Immediate Accommodations**

The facility shall provide detainees with disabilities with necessary accommodations in an expeditious manner. In many situations, the facility will be able to immediately grant a detainee's request for an accommodation.

##### **2. Medical and Mental Health Treatment**

Many detainees with disabilities will receive medical and/or mental health treatment from the facility's clinical medical authority. Where a detainee with a disability is fully able to access the facility's programs and activities through the provision of appropriate medical or mental health treatment, further interactive process may not be necessary. However, where the provision of accommodations depends on medical expenditures requiring ICE/ERO authorization, the facility shall consider whether there are any interim accommodations that would afford the detainee access to its programs and activities pending ICE/ERO authorization (for example, providing a wheelchair as an interim accommodation to allow for mobility while a prosthesis is repaired), and shall provide to the detainee any such interim accommodations it identifies.

##### **3. Enhanced Interactive Process**

Requests or referrals that require an enhanced interactive process include (1) detainees with mobility impairments; (2) detainees with communication impairments; (3)

detainees whose initial requests for accommodations or assistance have been denied; (4) detainees who have filed grievances about the accommodation of their disabilities or impairments; (5) detainees whose requests are complex or best addressed by staff from more than one discipline (e.g., security, programming, medical, or mental health, etc.); and (6) detainees whose cases are otherwise determined by facility staff to be appropriate for enhanced review.

The enhanced interactive process will likely include participation from a healthcare professional and any additional facility staff with requisite knowledge of and/or responsibility for compliance with the facility's obligation to accommodate detainees with disabilities. When appropriate, the facility shall consult with ICE/ERO to obtain guidance, information, and/or resources for providing accommodations.

a. Interaction with the Detainee

Given the importance of considering information from the detainee, the facility shall make a good faith attempt to interview the detainee and determine the nature of the detainee's disability, any difficulties the detainee experiences in accessing the facility or its programs or services, and the detainee's specific requests or needs for accommodation, if any.

The facility will respect any detainee's decision to decline to participate in the accommodation process. If a detainee declines such an invitation, the facility will document this declination.

b. Determinations

The facility will determine whether the detainee has a disability, whether the detainee requires an accommodation to meaningfully access the facility's programs and activities, and whether to grant or recommend denying the requested accommodation (if any) or propose an alternate, equally effective accommodation. The facility will issue a written decision within a reasonable time of the request or referral.

If there is a delay in determining whether to approve an accommodation request or in providing the detainee with an approved accommodation, the facility shall consider whether there are any interim accommodations that would afford the detainee access to its programs and activities pending the final disposition of the request or the provision of approved accommodations. The facility shall provide to the detainee any such interim accommodations it identifies.

Where the facility approves a request for an accommodation, but the recommended accommodation requires approval from ICE/ERO (i.e., expenditures on medical treatment, medication, and durable medical equipment that require IHSC authorization), the facility will inform the detainee of the decision and the status of the request with ICE/ERO and shall consider whether to provide an interim accommodation. The facility shall provide to the detainee any such interim accommodations it identifies.

Where the facility approves a request for accommodations, and can immediately provide the necessary accommodation, that decision will be the final facility determination, and the team will follow the notification procedures outlined below and implement the approved accommodations as quickly as possible.

c. Final Review of Any Denial by Facility Administrator or Assistant Facility Administrator

Any denial of a request for accommodation related to a disability must be approved by the facility administrator or assistant facility administrator. Such denials include all cases in which the facility determines that accommodations, including all requested accommodations, should be denied; or that alternate unrequested accommodation(s) should be provided.

d. Detainee Notification

The facility will provide the detainee with written notification of the final decision on his or her request for accommodation, regardless of whether an accommodation was granted or denied, and regardless of whether the accommodation requires further approval by ICE/ERO. Notification of a denied accommodation, or provision of an alternate, unrequested accommodation, will include a justification for the denial. Notification shall be provided in a language or manner the detainee can understand.

e. Staff Notification

Where an accommodation is granted, all relevant facility staff, including facility security staff, receive timely notification and, as needed, instructions for successful implementation of the accommodation. The provision of this information will also account for any applicable privacy and confidentiality considerations.

**F. Denial of an Accommodation**

Permissible reasons for the facility to deny an accommodation to a detainee who has been determined to have a disability include: (1) the detainee is not denied access to the facility's programs or activities because of a disability; (2) there is not a nexus between the disability and the requested accommodation; (3) the requested accommodation would fundamentally alter the nature of the program, service, or activity; (4) the requested accommodation would result in an undue financial and administrative burden; or (5) the detainee poses a direct threat to staff or other detainees.

Both "fundamental alteration" and "undue financial and administrative burden" are generally high standards that are difficult to meet. Further, if a particular accommodation would result in an undue financial and administrative burden or fundamental alteration, the facility must take any other action that would not result in such an undue burden or fundamental alteration but would nevertheless ensure that, to the maximum extent possible, detainees with a disability receive the benefits and services of the program or activity. Similarly, determinations that individuals pose a "direct threat" are generally very rare, and require a careful, individualized assessment as described below.

### **1. Fundamental Alteration**

A “fundamental alteration” to a facility’s programs, services, or activities is a change that is so significant that it alters the essential nature of the program, service, or activity offered. Whether a change constitutes a fundamental alteration is a determination that must be made on a case-by-case basis, and that must consider the unique characteristics of each facility and each detainee with a disability.

### **2. Undue Financial and Administrative Burden**

An “undue financial and administrative burden” is a significant difficulty or expense related to a facility’s operations, programs, or activities. In evaluating whether a particular accommodation would result in an undue burden, the facility must consider all resources available for use in the funding and operation of the conducted program or activity *as a whole*.

### **3. Direct Threat**

The facility may justify the denial of an accommodation to a detainee with a disability on the basis of the detainee posing a direct threat to staff or other detainees only if providing the accommodation would unavoidably exacerbate the threat. The determination that a detainee with a disability poses such a direct threat to staff or other detainees must be reached through an individualized assessment. The assessment must rely on reasonable judgment and current medical evidence, or the best available objective evidence, to determine the nature, duration, and severity of the risk, and whether any modifications of policies, practices, or procedures can mitigate or eliminate the risk. Detainees who are found to pose a direct threat are nevertheless entitled to auxiliary aids or services to allow for effective communication.

## **G. External Notifications**

### **1. Notification of a Detainee with a Communication or Mobility Impairment**

The facility shall notify ICE/ERO as soon as practicable, but no later than 72 hours, after the facility has completed its enhanced interactive process to assess the needs of any detainee with a communication or mobility impairment. This notification must include, at a minimum,

- a. The nature of the detainee’s disability or impairment;
- b. The accommodation requested by the detainee; and
- c. The facility’s plan to accommodate the detainee.

### **2. Notification of Facility Denials and Provision of Alternative Accommodations**

The facility shall notify ICE/ERO in writing within 72 hours of any denial of any accommodations request. This notification must include, at a minimum,

- a. The nature of the detainee’s disability;
- b. The accommodation requested by the detainee;
- c. The reason for denial; and
- d. Any steps the facility has taken to address the detainee’s needs.

ICE/ERO may review the facility's denial of a request for an accommodation. The facility shall provide additional information as needed to further ICE/ERO's review, and shall cooperate with ICE/ERO on any additional steps that may be necessary.

## **H. Detainee Orientation**

The facility orientation program shall notify and inform detainees about the facility's disability accommodations policy, including their right to request reasonable accommodations and how to make such a request, in a language and/or manner they can understand.

The facility will post other documents for detainee awareness in detainee living areas and in the medical unit, as requested by ICE/ERO.

## Appendix: Resources

*Note: This appendix is not, and should not be interpreted as, legal advice. This appendix is intended only as a reference. The materials referenced herein are non-exhaustive, and facilities are responsible for determining whether and how any additional laws apply.*

### Applicable Federal Laws and Regulations

#### **Section 504 of the Rehabilitation Act of 1973**, as amended, 29 U.S.C. § 794 (Section 504)

- Section 504 prohibits discrimination on the basis of disability in programs conducted by Federal agencies, in programs receiving Federal financial assistance, in Federal employment, and in the employment practices of Federal contractors. Section 504 requires that no individual with a disability may be denied the opportunity to participate in a program, service, or activity solely by reason of a disability. The facility is required to provide reasonable modifications to provide individuals with disabilities with an equal opportunity to access, participate in, or benefit from the facility's programs, services, and activities. When considering what reasonable modifications to provide, the facility will engage in an interactive and individualized process that considers the individual's needs and gives primary consideration to the preferences of the individual with a disability.
- DHS' Section 504 implementing regulations: 6 C.F.R. Part 15
- Link to DHS' Section 504 regulations: <https://www.gpo.gov/fdsys/pkg/CFR-2004-title6-vol1/pdf/CFR-2004-title6-vol1-part15.pdf>

#### **Architectural Barriers Act of 1968**, 42 U.S.C. §§ 4151 *et seq.* (ABA)

- The ABA requires that buildings and facilities that are designed, constructed, or altered with Federal funds, or leased by a Federal agency, comply with Federal standards for physical accessibility. ABA requirements are limited to architectural standards in new and altered buildings and in newly leased facilities. They do not address the activities conducted in those buildings and facilities.
- Implementing Regulations: 41 CFR Subpart 101-19.6
- Link to the ABA: <https://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-aba-standards>

### U.S. Department of Homeland Security (DHS) Resources

#### **Directive No. 065-01: Nondiscrimination for Individuals with Disabilities in DHS-Conducted Programs and Activities (Non-Employment)**

- This Directive establishes the DHS policy and implementation mechanisms for ensuring



nondiscrimination for individuals with disabilities served by DHS-conducted programs and activities under Section 504.

[https://www.dhs.gov/sites/default/files/publications/dhs-management-directive-disability-access\\_01.pdf](https://www.dhs.gov/sites/default/files/publications/dhs-management-directive-disability-access_01.pdf)

### **Directive 065-01-001: Instruction on Nondiscrimination for Individuals with a Disability in DHS-Conducted Programs and Activities (Non-Employment)**

- This Instruction implements the DHS Directive 065-01, Nondiscrimination for Individuals with Disabilities in DHS-Conducted Programs and Activities (Non-Employment).  
[https://www.dhs.gov/sites/default/files/publications/dhs-instruction-nondiscrimination-individuals-disabilities\\_03-07-15.pdf](https://www.dhs.gov/sites/default/files/publications/dhs-instruction-nondiscrimination-individuals-disabilities_03-07-15.pdf)

### **A Guide to Interacting with People who Have Disabilities:**

- The DHS Office for Civil Rights and Civil Liberties developed this Guide to assist DHS personnel, contractors, and grantees in their interactions with people who have disabilities. Under Section 504, DHS has a legal obligation to ensure nondiscrimination in the employment of people with disabilities as well as by providing program access, physical access, effective communication, and reasonable accommodation to people with disabilities encountered and served by DHS programs and activities. Examples of these interactions include detainees with disabilities who are in ICE custody awaiting a hearing or removal; this also includes individuals with disabilities who are members of the public, a family member, friend and/or attorney of a detainee who seek to access ICE programs, services and activities. Ensuring nondiscrimination often begins by practicing effective methods for interaction, such as treating individuals with respect and using appropriate language. This Guide offers a summary of disability myths and facts, guidance on appropriate language, and tips for successfully interacting with people who have disabilities. It is intended as a general overview of the topic and does not supplant any specific policies and procedures used by the DHS Components.  
[https://www.dhs.gov/sites/default/files/publications/guide-interacting-with-people-who-have-disabilities\\_09-26-13.pdf](https://www.dhs.gov/sites/default/files/publications/guide-interacting-with-people-who-have-disabilities_09-26-13.pdf)

### **Other Federal Government Resources**

#### **Disability.gov (www.disability.gov):**

- Disability.gov is the U.S. federal government website for comprehensive information about disability-related programs, services, policies, laws and regulations nationwide. The site links to thousands of resources from many different federal government agencies, as well as state and local governments and nonprofit organizations across the country. New resources are frequently added to Disability.gov's 10 main subject areas: Benefits, Civil Rights, Community Life, Education, Emergency Preparedness, Employment, Health, Housing, Technology and Transportation.

**U.S. Department of Justice, Disability Rights Section ([www.ada.gov](http://www.ada.gov)):**

- ADA.gov is a website operated by the Disability Rights Section in the Civil Rights Division of the U.S. Department of Justice (DOJ) to continuously provide new and updated information and guidance on the Americans with Disabilities Act (ADA) and its requirements. DOJ also operates a toll-free information line for those seeking to comply with the ADA: (800) 514-0301 for voice calls; or (800) 514-0383 for TTY. [Note: The ADA does not apply to ICE's detention programs and activities. However, [ada.gov](http://ada.gov) provides helpful disability-related technical assistance materials on various subjects.]

**The U.S. Access Board ([www.access-board.gov](http://www.access-board.gov)):**

- The U.S. Access Board is an independent federal agency that promotes equality for people with disabilities through leadership in accessible design and the development of accessibility guidelines and standards for the built environment, transportation, communication, medical diagnostic equipment, and information technology. The Board develops and maintains design criteria for the built environment, transit vehicles, telecommunications equipment, medical diagnostic equipment, and information technology. The Board also provides technical assistance and training on these requirements and on accessible design and continues to enforce accessibility standards that cover federally funded facilities. The Board's Section 508 Standards apply to electronic and information technology procured by the federal government, including computer hardware and software, websites, phone systems, and copiers. They were issued under Section 508 of the Rehabilitation Act which requires access for both members of the public and federal employees to such technologies when developed, procured, maintained, or used by federal agencies. The Board operates a toll-free line: (800) 872-2253 or TTY (800) 993-2822.

## Approval of Policy

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**Name/Title**

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**Date**