



U.S. Department of Justice

Civil Rights Division

*Disability Rights Section - NYA
950 Pennsylvania Ave, NW
Washington, DC 20530*

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BY E-MAIL AND REGULAR MAIL

Andrea Barraclough
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State of Nevada, Office of the Attorney General
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Re: U.S. Department of Justice Review of the Nevada Department of Corrections' Compliance with Title II of the Americans with Disabilities Act: Findings of Fact and Conclusions of Law, DJ Nos. 204-46-175, 204-46-176

Dear Ms. Barraclough:

The United States Department of Justice (the "Department") has completed its review of the Nevada Department of Corrections' ("NDOC") policies, practices, and procedures for housing and employing inmates with disabilities. We initiated this compliance review under Title II of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12131-12134, and its implementing regulation, 28 C.F.R. pt. 35, after receiving complaints from inmates who allege that the NDOC places inmates with human immunodeficiency virus ("HIV") in segregated housing and denies them equal opportunities to earn work credits to reduce the lengths of their sentences. Over the course of our review, we also received complaints that the NDOC denies equal housing and employment opportunities to inmates with mobility disabilities or certain medical or mental health conditions.

Following our review, we find that the NDOC has violated Title II of the ADA by discriminating against inmates with disabilities in the following manner:

1. Segregating inmates with HIV pursuant to the NDOC's "House Alike / House Alone" policy, which directs NDOC facilities not to house inmates with HIV in the same cells as inmates who do not have HIV;
2. Denying inmates with HIV equal employment opportunities through which they could earn credits to reduce the lengths of their sentences; and
3. Denying inmates with disabilities, including those with mobility disabilities, HIV, or certain other medical or mental health conditions, equal opportunities to benefit from the services, programs, and activities offered by the NDOC's conservation camps and

transitional-housing facilities—including the opportunity to earn substantial credits to reduce the lengths of their sentences.

The latter two practices deprive inmates with disabilities of opportunities to engage in productive activities and to reduce the lengths of their sentences, while the first practice—implementation of the “House Alike / House Alone” policy—stigmatizes inmates with HIV and indiscriminately discloses their confidential HIV status to NDOC employees and inmates. Leading public health and correctional authorities, such as the Centers for Disease Control and Prevention and the National Commission on Correctional Health Care, oppose the routine segregation of inmates with HIV as medically unnecessary.

Set forth in greater detail below are the Department’s findings of fact and conclusions of law, as well as the minimum steps the NDOC must take to remedy the violations identified herein.

I. THE DEPARTMENT’S COMPLIANCE REVIEW

The Department initiated this review of the NDOC’s compliance with Title II of the ADA after receiving complaints from two inmates at High Desert State Prison (“HDSP”), a medium-custody prison in Indian Springs, Nevada. The inmates alleged that the NDOC housed them separately because they have HIV. One of the inmates further alleged that because he has HIV, the NDOC: (1) denied him work opportunities at HDSP; and (2) refused to transfer him to a minimum-custody conservation camp, even after it had determined that he was eligible for reclassification from medium to minimum custody. According to the inmate, these denials deprived him of the opportunity to earn work credits to reduce the length of his sentence.

The Department’s review included visits to HDSP and Casa Grande Transitional Housing, a transitional-housing facility in Las Vegas, Nevada; interviews with over 30 inmates with disabilities at various institutions; interviews with over 20 NDOC employees at various institutions and levels of seniority; and a review of documents produced by inmates and the NDOC.

II. STATUTORY AND REGULATORY BACKGROUND

Title II prohibits the NDOC from: (i) discriminating against inmates with disabilities; (ii) excluding inmates with disabilities from participating in its services, programs, or activities; and (iii) denying inmates with disabilities the benefits of its services, programs, or activities. 42 U.S.C. § 12132; *see* 28 C.F.R. § 35.130(a). Supplying more detail to these broad prohibitions, Title II’s implementing regulation provides that the NDOC must:

- Not provide inmates with disabilities opportunities that are unequal to, or different or separate from, those afforded to inmates who do not have disabilities, 28 C.F.R. § 35.130(b)(1);

- Not deny inmates with disabilities the opportunity to participate in or benefit from the NDOC’s aids, benefits, services, or programs, *id.*;
- Reasonably modify its policies, practices, or procedures where necessary to avoid discrimination on the basis of disability, unless the NDOC can demonstrate that making modifications would fundamentally alter the nature of its services, programs, or activities, *id.* § 35.130(b)(7);
- Not impose or apply eligibility criteria that screen out or tend to screen out inmates with disabilities from fully and equally enjoying the NDOC’s services, programs, or activities, unless the NDOC can show that such criteria are necessary for its provision of those services, programs, or activities, *id.* § 35.130(b)(8);
- Not place inmates with disabilities in facilities that do not offer the same programs as the facilities where they otherwise would be housed, *id.* § 35.152(b)(2)(iii); and
- Administer its services, programs, and activities—including its housing of inmates—in the most integrated setting appropriate to the needs of inmates with disabilities, *id.* §§ 35.130(d), 35.152(b)(2).

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The NDOC violates the above statutory and regulatory requirements by: (1) housing inmates with HIV in segregated cells; (2) restricting the employment opportunities of inmates with HIV; and (3) limiting the opportunities of inmates with disabilities to benefit from the services, programs, and activities offered by the NDOC’s conservation camps and transitional-housing facilities.

A. The NDOC’s housing policy segregates and stigmatizes inmates with HIV.

Under NDOC Administrative Regulation (“AR”) 610.03(3), institutions may house inmates with HIV in double-occupancy cells only with other inmates who have HIV. Thus, to the extent institutions use cells rather than dormitories (*i.e.*, open rooms with bunk beds) to house inmates, they must house inmates with HIV either with other inmates with HIV or alone. NDOC employees accordingly refer to AR 610.03(3) as the “House Alike / House Alone” policy, or the “HAHA” policy.

Public health and correctional authorities agree that this sort of routine segregation of inmates with HIV is medically unnecessary. HIV cannot survive long outside of the body, so it cannot be transmitted through ordinary daily activities such as sharing toilets; sharing dishes or drinking glasses; shaking hands; hugging; touching; sneezing; coughing; or exposure to the

saliva, tears, or sweat of a person with HIV.¹ Given the absence of any health justification for routinely segregating inmates with HIV, and the risk that segregation will expose inmates' confidential HIV status, the CDC and the National Commission on Correctional Health Care ("NCCHC") oppose such segregation.² Likewise, the Bureau of Prisons prohibits federal correctional facilities from establishing "special or separate housing units . . . for HIV-positive inmates." 28 C.F.R. § 549.13(c).

Because only inmates with HIV are subject to the NDOC's "HAHA" policy, an inmate's HIV status is effectively disclosed to NDOC inmates and employees when he or she is housed in a cell with an inmate who may be known to others to have HIV, or when he or she is housed in a cell alone (an unusual phenomenon for general-population inmates at NDOC prisons that use double-occupancy cells). Indeed, the NDOC has housed some inmates with HIV in cells by themselves for days or weeks at a time pending the arrival of other inmates with HIV—a practice that has aroused inmate suspicions that inmates who are housed alone have HIV.

As a result of the NDOC's unnecessary segregation policy, the NDOC has exposed inmates with HIV to potential harm from inmates who may hold unfounded fears of, or prejudices against, those with HIV. Inmates have harassed or threatened those whom they believe have HIV. And as described below, NDOC employees have subjected inmates with HIV to unequal treatment based on their HIV status.

B. The NDOC denies inmates with HIV equal employment opportunities.

Though the NDOC offers inmates employment opportunities for which they can earn "work credits" that may be applied to reduce the lengths of their sentences, it denies inmates with HIV equal opportunities to obtain work assignments. Consistent with CDC guidance that HIV cannot be transmitted by consuming food handled by an individual with HIV,³ NDOC policy expressly provides that inmates with HIV may work in the "culinary" (*i.e.*, kitchen). But some NDOC employees either are unaware of, or have knowingly disregarded, this policy. Some NDOC employees continue to advise inmates with HIV that they cannot work in the culinary, and some—including caseworkers and culinary supervisors—have terminated inmates

¹ Centers for Disease Control and Prevention ("CDC"), *HIV Transmission* (Dec. 14, 2015), <http://www.cdc.gov/hiv/basics/transmission.html>.

² See CDC, *HIV Testing Implementation Guidance for Correctional Settings* 26 (Jan. 2009), http://www.cdc.gov/hiv/pdf/risk_correctional_settings_guidelines.pdf (emphasizing importance of maintaining confidentiality of medical information and discouraging segregated housing of inmates with HIV); NCCHC, *Administrative Management of HIV in Correctional Institutions* (Oct. 19, 2014), <http://www.ncchc.org/administrative-management-of-hiv-in-correctional-institutions> ("NCCHC opposes routine segregated housing for [] inmates [with HIV]. . . . [Such inmates] should not be medically isolated solely because of their HIV status").

³ CDC, *HIV Transmission* (Dec. 14, 2015), <http://www.cdc.gov/hiv/basics/transmission.html>.

from employment in the culinary upon discovering that they have HIV. Given the limited supply of inmate jobs within the NDOC, the exclusion of inmates with HIV from culinary work assignments has further narrowed the already-limited number of available employment opportunities. This has deprived inmates with HIV of an equal opportunity to earn work credits—thus potentially compelling them to serve longer sentences than inmates who do not have HIV.

C. The NDOC denies inmates with disabilities equal opportunities to benefit from the services, programs, and activities offered by its conservation camps and transitional-housing facilities.

The NDOC houses inmates whom it has classified to its lowest custody levels—“minimum” and “community trustee”—at conservation camps and transitional-housing facilities, both of which are less secure than NDOC prisons. But the NDOC generally limits or entirely excludes certain categories of inmates from placement at those facilities, including: (1) inmates with mobility disabilities; (2) inmates with medical conditions that the NDOC deems “chronic,” such as HIV, hepatitis B, hepatitis C, diabetes, asthma, and hypertension; and (3) inmates who take medications that the NDOC has classified as “non-keep-on-person” medications, such as anticoagulants, muscle relaxants, or medications for treatment of mental health conditions, HIV, tuberculosis, psoriasis, or rheumatoid arthritis.

By denying inmates with disabilities equal opportunities to obtain placement at its lower-custody (and thus lower-security) facilities, the NDOC confines them in more restrictive settings than they otherwise would be housed. It also deprives them of a vast array of employment opportunities: Unlike prisons, which offer only a limited number of inmate jobs, conservation camps and transitional-housing facilities have sufficient jobs for all of their inmates and require all of their inmates to work. And because inmates at conservation camps and transitional-housing facilities earn twice as many work credits as those at medium-custody prisons, the NDOC’s refusal to transfer inmates with disabilities to these lower-custody facilities effectively compels them to serve longer sentences than inmates who do not have disabilities.

1. The NDOC excludes inmates with disabilities from classification to its lowest custody level and from housing at its transitional-housing facilities.

The NDOC’s two transitional-housing facilities house inmates at the NDOC’s lowest custody level: community trustee. Community-trustee inmates are all within eighteen months of probable release from NDOC custody and spend their days working (or seeking work) in positions of their choosing in the local communities in which the transitional-housing facilities are located. These inmates earn twenty days of work credits per month, rather than the maximum of ten days per month available to inmates at medium-custody prisons.

The NDOC withholds community-trustee classification from inmates with disabilities and bars their placement at transitional-housing facilities, even if those inmates are otherwise eligible for such classification. In doing so, the NDOC deprives them of the benefits it affords to

other inmates to, *inter alia*, earn up to twenty days of work credits per month, earn money by working in the community, and gradually reintegrate into society by interacting with individuals outside the NDOC system.

2. The NDOC restricts the opportunities of inmates with disabilities to obtain placement at its conservation camps.

The NDOC's nine conservation camps house inmates whom the NDOC has classified to its next lowest custody level: minimum. Conservation-camp inmates work under the supervision of NDOC employees, often performing such tasks as firefighting, roadside litter removal, landscape beautification, and other projects designed to assist local communities. Like inmates at transitional-housing facilities, conservation-camp inmates earn up to twenty days of work credits per month, rather than the ten days per month that employed inmates at medium-custody prisons are eligible to earn.

The NDOC restricts male inmates with disabilities, and entirely excludes female inmates with disabilities, from obtaining placement at its conservation camps. Granting its employees broad authority to exclude inmates with disabilities, NDOC Administrative Regulation 521.04(3)(C)(2) provides that "[m]edical, dental or mental health concerns" are "discretionary" factors that may justify excluding inmates from minimum-custody classification. Thus, even though the NDOC's only camp for women has part-time medical staff, the camp generally does not accept inmates with "chronic" medical conditions, mental health conditions, or other disabilities. And while two of the NDOC's eight camps for male inmates—Three Lakes Valley Conservation Camp ("TLVCC") and Stewart Conservation Camp ("SCC")—nominally house inmates with disabilities, both accept only a limited number of such inmates, and during only approximately five months each year. TLVCC and SCC maintain such long wait lists that inmates with disabilities must wait months—or even a year or more—for bed space to become available in one of the few camp slots allotted for them. These inmates remain at the medium-custody level, even though the NDOC has determined that they are eligible for classification at the minimum-custody level.

Without providing for appropriate alternatives, the NDOC denies inmates with disabilities equal opportunities to benefit from the services, programs, and activities offered by its minimum-custody camps. Many inmates with disabilities who are otherwise eligible for minimum-custody classification must remain in the more restrictive settings of *medium*-custody prisons, as the NDOC transfers their non-disabled counterparts to minimum-custody camps. And those same inmates with disabilities, if fortunate enough to obtain employment at the NDOC's medium-custody prisons, earn a maximum of ten days of work credits per month, while their camp counterparts earn twice as many work credits per month.

By virtue of having a mental health condition, mobility disability, HIV, hepatitis B, hepatitis C, diabetes, asthma, or any one of the various other medical conditions that the NDOC deems "chronic," many inmates with disabilities serve longer sentences, in more restrictive settings, than inmates who do not have disabilities.

IV. REMEDIATION

To remedy the above deficiencies and protect the rights of inmates with disabilities, the NDOC must implement, at minimum, the remedial measures set forth below:

1. Abolish AR 610.03(3) and adopt a housing policy that does not isolate or segregate inmates with HIV on the basis of their HIV status.
2. Appropriately train and educate all employees and inmates about HIV and the virus's methods of transmission.
3. Ensure that all employees are trained and educated about, and follow, NDOC AR 610.03(2), which provides that inmates with HIV "may be classified to work assignments in the canteen, culinary, food services, infirmary, or allied health services area."
4. Reasonably modify policies, practices, and procedures to ensure that: (1) inmates with disabilities have the same opportunities to obtain work assignments that the NDOC provides to inmates who do not have disabilities; and (2) the NDOC makes reasonable modifications in work assignments, terms, and conditions to accommodate inmates' disabilities.
5. Abolish AR 521.04(3)(C)(2) and classify inmates to custody levels without regard to their mental health conditions, medical conditions, mobility impairments, or other disabilities.
6. House inmates in accordance with the custody levels for which they are eligible.
7. Reasonably modify policies, practices, and procedures to ensure that inmates with disabilities have equal opportunities to participate in and benefit from programs, services, activities, aids, and benefits (*e.g.*, the opportunity to earn work credits) that the NDOC makes available to other inmates at each of the NDOC's custody levels.
8. Institute a non-discrimination policy that reflects the requirements of Title II and its implementing regulation.
9. Train and educate all employees about the requirements of Title II, its implementing regulation, and the NDOC's non-discrimination policy for inmates with disabilities.
10. Designate at least one employee to coordinate all of the NDOC's efforts to comply with and carry out the NDOC's responsibilities under Title II, and at least one employee at each NDOC facility who will be responsible for coordinating that facility's efforts to comply with and carry out its responsibilities under Title II. Each coordinator will, *inter alia*, coordinate requests from inmates with disabilities for reasonable modifications and auxiliary aids and services.

11. Pay compensatory damages to aggrieved persons for injuries caused by the NDOC's failure to comply with Title II.

V. CONCLUSION

We hope to work cooperatively with you to resolve the Department's findings about the NDOC's discriminatory treatment of inmates with disabilities. Should we fail to agree on an appropriate resolution of this matter, the Attorney General may initiate a lawsuit pursuant to Title II. *See* 42 U.S.C. §§ 2000d-1, 12133-34. Please contact Pearlina Hong, Trial Attorney, at (202) 616-2927 by July 11, 2016 if you are willing to resolve this matter in a manner that will bring the NDOC into full compliance with Title II.⁴

Sincerely,



Rebecca B. Bond
Chief
Disability Rights Section

⁴ This Letter of Findings is a public document and will be posted on the Civil Rights Division's website at www.ada.gov. We will share a copy of this letter with complainants and other affected individuals. Pursuant to 28 C.F.R. § 35.172(d), a complainant may file a private suit at any time pursuant to Section 203 of the ADA, 42 U.S.C. § 12133.