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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

IN THE MATTER OF LITIGATION)	
RELATING TO CONDITIONS OF)	CAUSE NO. CV 93-46-H-
CONFINEMENT AT MONTANA)	DWM-JCL
STATE PRISON,)	
)	
THIS DOCUMENTS RELATES TO:)	
<i>Terry LANGFORD, et. al.,</i>)	DECLARATION OF ERIC
)	BALABAN IN SUPPORT OF
Plaintiffs,)	PLAINTIFFS' NOTICE OF
)	FILING ADA EXPERTS'
v.)	REPORT
)	
<i>Gov. Steve BULLOCK, et. al.,</i>)	
)	
Defendants.)	

District of Columbia:

Eric G. Balaban, pursuant to 28 U.S.C. §1746, hereby makes the following declaration:

1. I am lead counsel in the above-entitled action, and make this declaration in support of Plaintiffs' Notice of Filing ADA Experts' Report, filed herewith.

2. I have attached as an exhibit to this Declaration a true and correct copy of the following document:

a. Paul Bishop and Subia Consulting, Montana State Prison, Deer Lodge, MT. Program Access Assessment & Facility Accessibility Survey Report, as Exhibit A.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 30, 2013.

/s/ Eric Balaban

Eric Balaban

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Montana State Prison
Deer Lodge, Montana



**PROGRAM ACCESS ASSESSMENT & FACILITY ACCESSIBILITY SURVEY
REPORT**

Prepared by: Paul L. Bishop, Architect
Subia Consulting Services, LLC
Draft Edition: November 1, 2012
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**ADA PROGRAM ACCESS ASSESSMENT
MONTANA STATE PRISON
LANGFORD V. SCHWEITZER, CAUSE NO. CV 93-46-H-DWM-JCL
SEPTEMBER 17-20, 2012**

1. OVERVIEW & EXECUTIVE SUMMARY

Consistent with relevant court orders and the American with Disabilities Act (ADA), this Programmatic Assessment is based upon a site visit which included staff and inmate interviews, inmate file reviews, direct observation of onsite prison programs and activities, and an off-site pre and post review of voluminous documents including policies, procedures, duty statements, requests for accommodations, grievances, training records, lesson plans and training materials. The purpose of the assessment was to determine whether Montana State Prison is in substantial compliance with the ADA.

In 1994, the United States District Court, District of Montana, Helena Division approved a stipulation by all parties that in part ordered the following:

Defendants shall ensure that inmates with disabilities are not excluded from participation in, or denied the benefits of housing, services, facilities and programs because of their disabilities. The Defendants shall develop and implement plans to integrate the disabled inmates into the mainstream of the institution.

Pursuant to the Settlement Agreement filed October 28, 1994, the “defendants shall be deemed to be in substantial compliance when they have substantially complied with it. Incidents of non-compliance do not necessarily prevent a finding of substantial compliance. The determination of substantial compliance shall take into account the extent to which exceptions to substantial compliance are sporadic or isolated in nature, are unintentional, are the temporary result of actions by members of the Plaintiff class, and are addressed by corrective action.”

However, in spite of the stipulated court order that places an affirmative obligation on the defendants; MSP does not identify or track many of its inmates with disabilities. The reason given is based upon privacy concerns and MSP not wanting to label these inmates as disabled for fear they may be discriminated against. While MSP has some policies that contain appropriate ADA language, the lack of appropriate screening, identification and tracking of accommodations provided to all disabled inmates in the MSP is inconsistent with the Federal Court Ordered Stipulated Settlement Agreement that MSP “shall ensure that inmates with disabilities are not excluded from

participation in, or denied the benefits of housing, services, facilities, and programs because of their disabilities,” and that “The Defendants shall develop and implement plans to integrate the disabled inmates into the mainstream of the institution.” In addition, the lack of systematic screening, identification, and tracking of disabled inmates and the accommodations provided makes internal monitoring and audits of ADA compliance and compliance with the Federal Court Ordered Stipulated Settlement Agreement by prison managers, supervisors, and staff virtually impossible. Due to the lack of a comprehensive ADA structure, staff did not have the tools to alert them of inmates with disabilities. Staff also lacked training in disability awareness and the need to provide accommodations during important and critical interactions with inmates with disabilities. This lack of disability awareness has resulted in some inmates with disabilities being disciplined for behavior that is directly related to their disabilities.

In spite of these deficiencies, Subia Consulting Services, LLC (“ADA Program Expert”) finds that MSP has made significant progress towards compliance with the ADA in numerous areas, including:

ADA Coordinator- A review of the ADA Coordinator Duty Statement revealed that ADA responsibilities are listed.

Fire and Life Safety – MSP has a procedure with attached Unit Plans that speaks to the evacuation of disabled inmates in case of an emergency.

Grievance Procedure Process- The ADA grievance/appeals process appears to be working well.

Library Services- It is noted that the recreation and law libraries at MSP have inmate library clerks who help inmates with finding books, materials, reading, scribing and providing assistance with legal work. The staff librarian also provides assistance when needed but primarily supervises the work of inmate library clerks. She stated that although the library does not contain materials in large print, she would make copies in large print upon request. She also indicated that inmates who are unable to read due to literacy or vision impairment could receive audio books as part of the Reading for the Blind Project. She was unaware of whether the inmate population was aware of this accommodation and stated that it should be mentioned during the orientation process. The library is also equipped with computers that allow inmates with vision impairment to increase the font size of written communications. Inmates whose disabilities prevent them from accessing the libraries are provided library services upon written request.

Additionally, MSP is making progress towards compliance with the ADA with regard to several programs and policies. However, full implementation of those policies and procedures does not always occur. Examples include:

Inmate Housing - MSP houses inmates in wheelchairs in designated wheelchair accessible beds. It is noted that there were several inmates who indicated that they had difficulty getting on the top bunk due to their disabilities. It is recommended that MSP develop a program that identifies inmates with disabilities who need lower bunks as an accommodation and who have other special housing needs as an accommodation.

MSP does not have a written plan for alternate wheel chair accessible housing or showers should the number of wheel chair users exceed the number of wheel chair accessible beds. It is noted that during this review, there were no wheel chair users inappropriately housed. However, one inmate who is a wheel chair user indicated that for a time he was housed on the other side of the housing unit and was required to use the facilities on that side which did not have an accessible shower.

Staff In-Service Training- A review of the MSP's In-Service Training records revealed that required staff attended the formal ADA training. This is a general ADA training that applies to all staff. However, MSP does not have specific language in this lesson plan nor does it have individual lesson plans on how to perform specific job duties related to inmates with disabilities for its custody, classification, or disciplinary staff.

Inmate Admissions Process - The MSP process indicates that all newly arriving inmates will receive an initial health screening/assessment to determine whether the inmate has any potentially life threatening medical or mental health problems. In interviewing staff, this screening also includes determining housing restrictions due to a medical condition. As part of the inmate reception and orientation, all inmates will receive mental health and medical examinations/evaluations. These examinations do not include screening for developmental or learning disabilities. With the exception of mental health and dental, these examinations/evaluations do not indicate the specific type of disability for the inmate or what major life activities are affected as a result of the disability.

Searches - The MSP procedure does contain language regarding the removal of prosthetic devices/limbs for inspection during unclothed body searches. Language regarding providing the inmate with a chair to accommodate the removal of a prosthetic leg should be added.

Offender Access to Telephones - The MSP policy does contain language regarding volume controlled telephones and the Telecommunications Device for the Deaf (TDD) for inmates with hearing or speech impairment. It is noted that there is a time limit of 15 minutes for telephone calls made while housed at the MDIU. Due to the necessity of typing and reading text, an accommodation of allowing additional time when using the TDD should be added.

Offender Reception and Orientation - MSP policy requires that offenders who have a literacy problem will be provided with a designated individual to assist in understanding the material. Interviews with Orientation staff revealed that this requirement to assist inmates in understanding orientation materials was not being completed. This is a direct violation of the ADA and the Federal Court's Stipulated Settlement Agreement that states in pertinent part: "The Defendants shall develop and implement plans to integrate the disabled inmates into the mainstream of the institution."

There are several MSP programs and policies that the Program Expert finds significant deficiencies which contribute to MSP from being in substantial compliance with the ADA. These include:

Overall ADA Policy - Policy No. DOC 1.3.15 is MSP's ADA policy. It contains appropriate high level ADA language regarding the responsibilities of the ADA Coordinator, requests for reasonable accommodation and complaints of disability discrimination. MSP does not have a systemic, integrated set of policies and procedures that require the identification of specific physical, developmental or learning disabilities and the needed accommodations for housing, announcements, body searches, count, work, education, classification, disciplinary, or health care appointments. MSP policies/procedures lack specific language regarding the sharing of disability related information with the staff that needs them.

Communication on Inmate Health Needs - MSP Procedure No. MSP HS A-08.0 states that health care staff will notify facility custody or administrative staff regarding inmates who require accommodations because they are chronically ill, on dialysis or physically disabled by completing a Health Status Report (HSR). This HSR will be provided to the inmate and his assigned housing unit. This form is to be carried by the inmate and relies heavily on the inmate informing staff that he needs an accommodation. Inmates who are developmentally disabled and/or seriously mentally ill do not self-advocate and will likely not request assistance or accommodation.

Medical records staff are directed to enter work restriction data on the adult Offender Management Information System (OMIS). A review of OMIS revealed very little or no information regarding inmate disabilities and accommodation needs. Additionally, a review of inmate records including main files and mini files revealed very little or no information regarding inmate disabilities and accommodation needs.

Staff Training - MSP policies and procedures are devoid of directives or guidance regarding equally effective communications with inmates with disabilities, and the requirement to provide and document accommodations provided to ensure equally effective communication.

In addition to the lack of specific policies and directives regarding complying with long standing court orders and the ADA, staff do not receive adequate and specific training with appropriate frequency to ensure ADA compliance in the performance of their specific duties. As a result of this lack of structure, supervisory and management staff are unable to conduct the necessary internal reviews to ensure that staff are complying with the ADA and providing the necessary accommodations to disabled inmates.

Employment - At MSP, inmates must seek out and apply to work at the job for which they are interested. Staff who supervise the job sites make the hiring decisions. A review of the Industries, kitchen, and other prison jobs revealed that disabled inmates were not hired. It is uncertain whether inmates are not hired because of their disabilities or disabled inmates simply did not apply because they believed they would not be hired. In either case, the extremely low numbers of disabled inmates being hired to work in various prison jobs is clear evidence of systemic exclusion and discrimination. This is a direct violation of the ADA and the Federal Court's Stipulated Settlement Agreement that states in pertinent part: "The Defendants shall develop and implement plans to integrate the disabled inmates into the mainstream of the institution."

A high school diploma or General Education Development (GED) is required for inmates to be eligible for vocational training. An inmate with a learning disability who may have plateaued in academic education, but is able to perform the essential functions of the vocational program and who could benefit from it is categorically excluded on the basis of not having a GED or high school diploma. This is a direct violation of the ADA and the Federal Court's Stipulated Settlement Agreement that states in pertinent part: "The Defendants shall develop and implement plans to integrate the disabled inmates into the mainstream of the institution."

Communication with Inmates - MSP does not have appropriate policy regarding equally effective communications for inmates with disabilities. There is no requirement for staff involved in classification, disciplinary or health care appointments to review to determine what accommodations may be needed to ensure effective communication. Although staff are to ensure all inmates understand and participate during these important contacts, there is no requirement for staff to provide appropriate accommodations or document the effective communication methods used. As such, a review of main files, mini-files, and health records revealed no documentation of effective communication needs or the methods used to ensure effective communication for inmates with vision/hearing impairments or those with mental, developmental or learning disabilities.

During the site visit, the ADA Program Expert observed a classification hearing. The inmate involved in the classification hearing had a Test of Adult Basic Education (TABE) score of 2.0 and a history of being in special education, and had difficulty understanding some words used by the classification staff. The classification staff took the time to rephrase and explain complex issues in simple English so that the inmate could understand. Even though considerable assistance was provided this inmate, there was no finding by classification staff that the effective

communication methods used satisfied him that the inmate understood the nature of the proceedings and that the inmate could meaningfully participate in the hearing. In addition, there was no documentation in the record of this provision of reasonable accommodation for effective communication.

During the site visit, the ADA Program Expert also observed a disciplinary hearing that was held in the non-contact visiting room on the High Side. The inmate was on one side of the glass and the Disciplinary Officer (DO) was on the other side. The Expert observed the hearing on the same side of the glass as the DO. It was very difficult to hear verbal communications through the glass due to the electric door constantly opening and closing and staff speaking just outside the door. The DO made a point of stopping the proceeding when it got noisy and began again after it was quiet. He indicated that it did present a challenge. In this instance, the inmate did not have a hearing impairment. This noisy environment would have made it extremely difficult for an inmate with hearing impairment to participate in the disciplinary process.

It is noted that for this review period MSP had two inmates with hearing impairment who used sign language as their primary method of communication. However, these inmates were not provided sign language interpreters during classification, disciplinary or health care appointments. Although these inmates requested sign language interpreters be provided, they were required to participate in these contacts by either lip reading or writing notes. MSP simply cannot deny sign language interpreters to deaf inmates who request the accommodation and force them to lip read or write notes. This is especially true since the MSP staff involved important such as disciplinary hearings, classification hearings, parole board hearings and health care appointments fail to document that these alternate forms of communication provide equally effective communication. This is a direct violation of the ADA.

Policy No. DOC 3.1.21, *Offender Count and Supervision*, and Procedure No. MSP 3.1.21, *Inmate Count and Supervision*, lack exceptions or modification to the stand-up count for inmates with mobility impairment who cannot or may have difficulty standing for the duration of the count process.

Offender Classification System – The MSP policy states that classification procedures will include provisions to identify offenders who may be management problems or have special needs including developmental disabilities. However, there is no testing to identify inmates who may have developmental disabilities. As a result, classification staff would not be aware of an inmate with a developmental disability who may need accommodation for ensuring equally effective communication. The failure of MSP to screen for and identify inmates who have developmental disabilities, who cannot advocate on their own behalf, and who are in need of equally effective communication, is a direct violation of the ADA and the Federal Court’s Stipulated Settlement Agreement that states in pertinent part: “The Defendants shall develop and implement plans to integrate the disabled inmates into the mainstream of the institution.”

Inmates received at MSP are housed in the Martz Diagnostic Intake Unit (MDIU) and undergo processing before being transferred to more permanent housing. While at the MDIU, inmates are provided an Orientation Handbook which contains important information regarding the prison’s mission, programs, services and activities, a list of key administrative, custodial and treatment personnel, prison rules, classification, records, and a notice of rights for offenders with disabilities. The handbook is not available in large print nor is there any accommodation provided for inmates with vision impairment or learning or developmental disabilities who cannot read or who may have difficulty understanding written materials.

Inmate orientation is conducted at MDIU and covers important subjects such as ADA, classification, disciplinary, grievance procedures. The power point slides are read by staff and provide accommodation for inmates with

disabilities who cannot read. However, the information regarding the ADA is insufficient. Inmates are told that they can request reasonable accommodation by completing an OSR form. Inmates are not provided a copy of the OSR form and the power point presentation does not have a slide that shows what the OSR form looks like. The power point presentation does not provide a list of accommodations available to inmates with disabilities at MSP. It is also too long and too complicated for inmates with developmental or learning disabilities.

Inmate Admissions Process – The MSP policy states that MDIU staff must provide assistance and explain the inmate handbook to inmates who are illiterate. MDIU staff involved in the orientation process are not informed of inmate TABE scores or which inmates may be illiterate. In addition, Inmates who are developmentally disabled do not self-advocate and will likely not request the appropriate assistance of staff. This is a direct violation of the ADA and the Federal Court’s Stipulated Settlement Agreement that states in pertinent part: “The Defendants shall develop and implement plans to integrate the disabled inmates into the mainstream of the institution.”

2. PROGRAM ASSESSMENT METHODS

28 Code of Federal Regulations Part 35 (28 CFR 35), titled ***Nondiscrimination on the Basis of Disability in State and Local Government Services*** implements subtitle A of title II of the Americans with Disabilities Act, Pub. L. 101-336, which prohibits discrimination on the basis of disability by public entities. Subtitle A protects qualified individuals with disabilities from discrimination on the basis of disability in the services, programs, or activities of all State and local governments. It extends the prohibition of discrimination in federally assisted programs established by section 504 of the Rehabilitation Act of 1973 to all activities of State and local governments, including those that do not receive Federal financial assistance, and incorporates specific prohibitions of discrimination on the basis of disability from titles I, III, and V of the Americans with Disabilities Act. This rule, therefore, adopts the general prohibitions of discrimination established under section 504, as well as the requirements for making programs accessible to individuals with disabilities and for providing equally effective communications. It also sets forth standards for what constitutes discrimination on the basis of mental or physical disability, provides a definition of disability and qualified individual with a disability, and establishes a complaint mechanism for resolving allegations of discrimination.

28 CFR Section 35.105 states that a public entity shall evaluate its current services, policies, and practices, and the effects thereof, that do not meet the requirements of this part and to the extent modification of any such services, policies and practices is required, the public entity shall proceed to make the necessary modifications. A review of the MSP services, policies, procedures and practices was conducted to determine whether they were compliant with the ADA’s requirement of prohibiting discrimination, program accessibility to individuals with disabilities and provision of equally effective communication. The review included, but was not limited to the following:

Policy No. DOC 3.3.1, Legal Rights of Offenders
Procedure No. MSP 3.3.2, Inmate Legal Access to Courts;
Policy No. DOC 3.3.3 Offender Grievance Program;
Procedure No. MSP 3.3.3, Inmate Grievance Program;
Policy No. DOC 3.3.7, Offender Access to Telephones;
Policy No. DOC 3.3.8, Offender Visiting;
Procedure No. MSP 3.3.100, Earned Privileges Program;
Procedure No. MSP 3.4.1, Institutional Discipline;
Policy No. DOC 3.4.1, Offender Disciplinary Schedule;
Procedure No. MSP 3.5.1, Locked Housing Operations;

Procedure No. MSP 3.5.5, Behavior Management Plans;
Policy No. DOC 4.1.1, Offender Admissions Process;
Procedure No. MSP 4.1.1, Inmate Admissions Process;
Policy No. DOC 4.1.2, Offender Reception and Orientation;
Procedure No. MSP 4.1.2, Inmate Reception and Orientation including the Martz Diagnostic and Intake Unit Orientation (MDIU) Hand Book;
Policy No. 4.1.3, Offender Personal Property;
Procedure No. MSP 4.1.3, Inmate Personal Property;
Policy No. DOC 4.1.4, Indigent Status;
Policy No. MSP 4.2.200, Special Management of Atypical Inmates;
Policy No. MSP 4.2.02, Inmate Separation Needs;
Policy No. DOC 4.2.1, Offender Classification System;
Procedure No. MSP 4.2.1, Inmate Classification System;
Procedure No. MSP 4.2.3, Unit Management;
Policy No. DOC 4.3.1, General Food Service Operations
Policy No. DOC 4.5.13, Intake/Reception Health Screening;
Policy No. DOC 4.5.27, Offender Mental Health Services;
Policy No. DOC 5.1.1, Inmate Assignments;
Policy No. MSP 5.3.100, Inmate Academic Education;
Policy No. DOC 5.3.2, Library Services;
Procedure No. MSP 5.3.2, Library Services;
Policy No. DOC 5.4.1, Offender Treatment Programs;
Procedure No. MSP 5.5.3, Recreation Programs;
Procedure No. MSP 5.5.4, Hobby Crafts Program;
Procedure No. MSP 5.6.1, Religious Programming;
Procedure No. MSP HS G-02.0, Inmates with Special Needs;
Procedure No. MSP HS G-04.0, Mental Health Services; and
Procedure No. MSP HS A-08.0, Communication on Inmate Health Needs.

A review of the following documents was also conducted: 1) The In-Service Training Report of 2009 that records staff training of the ADA for 2008 and 2009; 2) The Staff Supervision Nuts & Bolts Report that records training of ADA for staff supervisors from January 2006 through April 2012; 3) The New Employee Orientation Report that records ADA Training for staff from January 2008 through June 2012.; 4) The associated ADA lesson plans and power point slides, and 5) the Initial Classification lesson plan and power point slides as well as the Separation Needs lesson plan and power point slides.

In addition, during the site visit, the ADA Program Expert observed Inmate Orientation at the MDIU, two classification hearings, a disciplinary hearing, visited housing units on the High Side Facility, Low Side Facility, and Honor Dorm, libraries, academic education classrooms, observed dining operations during evening meal, the laundry operations and the recreation yard on the Low Side Facility while in use by inmates.

During the site visit, the ADA Program Expert also interviewed 13 inmates with disabilities, and reviewed 16 main files and 16 medical files. Attorneys from the American Civil Liberties Union (ACLU) suggested a few of 13 inmates that were interviewed. The majority of the inmates that were interviewed were based upon documents provided by the prison officials.

3. FINDINGS

As described in Sections 1 and 2 above, the ADA Program Expert reviewed a significant sampling of MSP's programs, services and activities to determine whether those programs, services and activities were accessible to inmates with disabilities and has used the above definition of substantial compliance for that determination.

The ADA Program Expert finds that MSP is not in substantial compliance with the ADA. That finding is based on the following:

3.1 Identification of Inmates with Disabilities

MSP does not have a comprehensive process for identifying inmates with disabilities. Interviews with MSP staff indicate there is reluctance with identifying inmates with disabilities due to a fear of labeling the individual. MSP staff state that labeling an inmate as disabled would prevent that individual from integrating into the mainstream of the prison. However, 28 CFR Section 35.130 provides that a public entity may not refuse to provide an individual with an equal opportunity to participate in or benefit from its program simply because the person has a disability. An individual with a disability should be able to claim or be known to have a disability and be free from discrimination on the basis of that disability.

The Program Expert recognizes that there are over 1,000 disabilities covered under the ADA. While the Expert does not believe that MSP has an obligation to seek out and identify every disabled inmate in their population, inmates with mobility, vision, hearing, speech, learning and developmental disabilities and those with severe mental health issues are the most likely to require reasonable accommodation to fully access and participate in prison programs.

The Program Expert also recognizes that many persons with disabilities do not need or want assistance from others. Inmates with disabilities that need assistance or accommodation based upon their disability and who have the ability to self-advocate should be required to request a reasonable accommodation. However, the Program Expert believes that MSP has an equal obligation to ensure that inmates with disabilities can fully participate in its programs and required processes. As a result, should a staff member be concerned that the inmate is having difficulty accessing programs or fully participating in such programs or processes based upon a disability, MSP has an obligation to have a process where staff can refer an inmate for a disability evaluation. Thus, once the disability has been identified, (either through self identification or referral), verified, and accommodations have been granted, MSP has an obligation to track the disability, the needed accommodations, and MSP must document any accommodations provided to ensure that the individual inmate's ADA needs are being met and that he or she can fully participate in available and appropriate programs.

In addition, the defendants have failed to comply with the 1994 stipulated settlement agreement that states in pertinent part:

Defendants shall ensure that inmates with disabilities are not excluded from participation in, or denied the benefits of housing, services, facilities and programs because of their disabilities. The Defendants shall develop and implement plans to integrate the disabled inmates into the mainstream of the institution

In accordance with **Procedure No. MSP 4.1.1, *Inmate Admissions Process***, an initial health care screening /assessment is completed during the initial admissions process at the MDIU to determine whether the inmate has diabetes, epilepsy or a history of mental illness. MSP HS A-08.0 states that a health status report (HSR) is completed

by a provider/nurse when a health condition is identified during the initial health assessment or during subsequent exams, which results in the need for activity limitations, facility restrictions or special housing requirements, or special needs or work restrictions. Medical staff will enter work restriction data in the Offender Management Information System (OMIS) database. Although MSP appears to have a process in place for identifying special housing requirements and other restrictions related to activity and work for some inmates with disabilities, it is not uniformly utilized by staff. Moreover, MSP does not have a comprehensive screening and identification process in place for identifying inmates with developmental, learning, mobility, vision, speech, or hearing disabilities or plan to integrate the disabled inmates into the mainstream of the institution. While MSP is well intentioned and eager to comply with the ADA, their system falls short of ensuring that inmates with disabilities are not excluded from participation in, or denied the benefits of housing, services, facilities, and programs because of their disabilities.

Inmates with developmental disabilities do not have the ability to advocate for themselves. They cannot and will not request assistance in the performance of activities of daily living or when engaged in due process events such as disciplinary, classification or parole board appearances. As such, staff need to be aware of these inmates and be proactive in providing any needed assistance. Without a proper identification process in place, staff have no way of knowing that these inmates need assistance or the type of assistance needed.

Additionally, MSP has inmates with mobility impairment that do not use wheelchairs who are not identified as having mobility impairment. These inmates may require an accommodation for standing count, emergency evacuation or for participation in education or work activities. During the interviews, one inmate claimed that he was reluctant to ask for reasonable accommodation for fear that he would be fired from his job.

The review also included speaking with an inmate who was hard of hearing. His primary method of communication was reading lips. His hearing impairment was not identified in the main file or in OMIS.

It is noted that MSP does have an adequate process in place for identifying inmates with mental health concerns and inmates with physical disabilities that require the use of a wheelchair and those that require medical treatment related to their disabilities.

3.2 Tracking of Inmates with Disabilities

MSP does not track inmates with disabilities. With the exception of tracking some of inmates with mobility impairment for purposes of providing assistance in the event of an emergency evacuation as part of its Fire and Line Safety plan, MSP does not do so for the same well-intentioned but misguided privacy and labeling concerns mentioned earlier in this report.

3.3 Information Sharing of Disabilities and Accommodations

MSP does not have policies that require the sharing of disability related information and the need for accommodations among program, custody and other staff. **Procedure No. MSP HS A-08.0, *Communication on Inmate Health Needs***, states that health care staff will notify facility, custody or administrative staff regarding inmates who require accommodation because they are chronically ill, on dialysis, physically disabled, terminally ill, frail or elderly or otherwise requirement arrangements for housing, movement, work or other program activities related to their health needs. It also states that a provider or nurse completes this information on a HSR form and copies of which will be filed in the medical chart, provided to the inmate, and to staff who operate the inmate's

housing unit or filed in the inmate's mini-file. It states that work restriction data will be entered in the OMIS. However, entries into OMIS for inmates with disabilities appear to be primarily based for employment purposes.

There were some entries in OMIS reflecting that an inmate may need assistance. This entry, while attempting to alert staff of an inmate's possible need for accommodation, is vague and does little to help the staff with any specific assistance needed. During the site visit, the ADA Program Expert observed a classification committee on an inmate with a learning disability who indicated that he had a history of being in special education. The inmate also had a TABE score of 2.0 and had a difficult time understanding some words and terms used by the classification staff. The classification staff did a good job of slowing down, using simple English and rephrasing when needed. Although there was considerable assistance provided this inmate to ensure equally effective communication was achieved, this fact was not noted on the classification hearing paperwork nor was the specific assistance provided documented in OMIS. As a result, staff will not be aware of the specific type of assistance needed in subsequent encounters with this inmate.

While it is important to ensure that inmates with disabilities are provided appropriate accommodations while employed, it is equally important to provide accommodations to ensure equally effective communication is achieved during disciplinary and classification hearings and Parole Board appearances.

The review of the main files and medical charts of inmates with hearing impairment and an inmate with a learning disability revealed no documentation that any accommodations were provided to ensure equally effective communication during classification or disciplinary hearings.

3.4 Staff Training

MSP does not provide specific ADA training for its employees based on their specific duties and interactions with inmates with disabilities. All staff receive general ADA training, which include information on the history of the ADA, activities covered under the ADA, who is a qualified individual, what constitutes discrimination, definition of reasonable accommodation, and the legal justification for denial of a reasonable accommodation. While this overview is essential, it is not sufficient in training custody staff of the type of reasonable accommodations that may be necessary when conducting body searches, standing count, making public address announcements, bed assignments, transporting inmates with mobility impairments, etc. It also does not provide the necessary training for classification staff or disciplinary officers or health care providers to ensure equally effective communication during these encounters.

Procedure No. MSP 3.4.1, *Institutional Discipline*, provides that an inmate may request an advisor to assist him during the disciplinary process. Some inmates with disabilities may need the assistance of an advisor. However, there is no specific training provided to staff who are assigned the role of an advisor. There is no specific training for staff providing assistance for inmates with mental health concerns during disciplinary hearings.

3.5 Orientation

Orientation does not provide sufficient information regarding what services or accommodations are available at MSP for inmates with disabilities. When an inmate is received at MSP, he is received and housed at the MDIU until completion of the admission process and orientation. Per **Procedure No. MSP 4.1.2**, all inmates must attend orientation and sign the attendance document along with the staff member(s) providing the orientation. The orientation program consists of a review of the MSP inmate handbook, an explanation of facility rules, regulations,

and services and relevant DOC policies and MSP operational procedures, a description of MSP activities and goals, explanation of any testing and examinations that are part of the screening process, and an opportunity to identify special needs and problems.

During the site visit, the ADA Program Expert observed an orientation presentation. It was conducted in a classroom setting by staff members using power point slides. Inmates who could not see the slides were given an opportunity to sit in the front rows. The staff member presenting the material read the slides, which provided an accommodation for any inmates who could not read the slides. Inmates with disabilities were told how to request accommodations but not told or shown a copy of the form to use for such request. There was no slide with a list of services or accommodations available at MSP. As such, inmates with disabilities are unaware of some services and accommodations and fail to request them. The ADA Program Expert had an interview with the librarian who stated that the program "Reading for Blind" in which inmates could receive books in audio form was available for all inmates who could not read. She indicated that the program was not being utilized as she suspected the inmate population was probably unaware of it. It is noted that there is a slide that mentions books on tape as an example of what inmates can request as a reasonable accommodation.

28 CFR Section 35.163 states that "a public entity shall ensure that interested persons, including persons with impaired vision and hearing, can obtain information as to the existences and location of accessible services, activities and facilities." A list of all programs and accommodations available at MSP to inmates with disabilities would certainly be more helpful to the inmate population and be in compliance with this section of the ADA.

3.6 Effective Communication

MSP does not have sufficient policies or procedures to ensure inmates with disabilities are provided reasonable accommodation for equally effective communication for classification and disciplinary hearings. 28 CFR Section 35.160 states "a public entity shall take appropriate steps to ensure that communications with applicants, participants and members of the public with disabilities are as effective as communications with others."

a. Classification

Procedure No. MSP 4.2.1, *Inmate Classification System*, all inmates including those with disabilities are required to appear at classification hearings throughout their confinement at MSP. An initial classification hearing is normally held within forty-five days of an inmate's admittance to MSP. Reclassification hearings are held at least every six months thereafter. Classification hearings involve important issues such as assignment of a custody level, appropriate housing assignments, assessing the inmate's needs and recommending appropriate program/treatment placement, review of eligibility for assignment to a particular housing unit, special review when an inmate has been found guilty of certain serious rule infractions, convictions on a new charge, detainer, behavior problems, separation needs, assignment or removal from a job, and recommending and determining overrides of objective classification scores when appropriate.

In certain cases, such as if the status of an inmate's present classification level is subject to increase, inmates are provided a written Notice of Classification Hearing in advance of the hearing. Inmates also receive a copy of the completed classification review form.

Policy No. DOC 4.2.1, *Offender Classification System*, and the Classification Lesson Plan, indicates that prior to the classification hearing, a personal interview is held to answer any questions the classification staff has and allows that

staff an opportunity to assess risks and needs. There is no requirement for staff to review file and OMIS to determine whether the inmate has a disability and may need a reasonable accommodation for equally effective communication. There is no requirement of documentation of disability status and needed accommodations on the classification hearing documents. There is no requirement to provide reasonable accommodation for equally effective communication and there is no requirement to document what accommodations were provided to ensure equally effective communication.

Inmates with hearing, vision or speech impairment and those with developmental and learning disabilities or mental health concerns may require a reasonable accommodation to understand and fully participate in the classification hearing. It is noted that during the site visit, the ADA Program Expert observed a classification hearing in which the classification staff provided considerable assistance to the inmate to ensure equally effective communication but did not document that assistance on the classification document or in OMIS. Indeed, MSP's policies and training do not provide the needed direction for its staff in the area of equally effective communication for inmates with disabilities.

b. Disciplinary

Procedure No. MSP 3.4.1, *Institutional Discipline*, provides for a process to discipline inmates for violations of prison rules and regulations as well as state and federal law. As part of the process, inmates receive written a Disciplinary Infraction Report listing the alleged charges. The inmate has a number of rights during the disciplinary process including the right to prepare and present a defense, including the calling of witnesses on his behalf. If a charge is substantiated, inmates can be subjected to a variety of sanctions including cell detention.

As part of the disciplinary hearing, the DHO must ensure that the inmate understands the charges filed and take appropriate actions to ensure the fairness and orderliness of the hearing.

During the site visit, the ADA Program Expert observed a disciplinary hearing on an inmate that was held in the High Side non-contact visiting room. This form of contact was exacerbated due to the noisy environment of the constant opening and closing of the electric door and the conversations of staff just outside of this area. Although the DHO stopped the proceeding during the opening and closing of the electric door, it was a challenging environment even for an inmate without hearing impairment. The DHO did not review the inmate's file or OMIS to determine whether the inmate was disabled or required a reasonable accommodation for equally effective communication. The DHO informed me that he does not document any assistance he provides to ensure inmates understand and participate in the disciplinary hearing nor does he making any findings or determinations that with the accommodations provided allow the inmate to meaningfully participate in the hearing.

3.7 Sign Language Interpreters

MSP does not provide sufficient sign language interpreter services for classification, disciplinary, group therapy, religious services or medical appointments.

28 CFR Section 35.160 states that "a public entity shall furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity conducted by a public entity. In determining what type of auxiliary aid and service is necessary, a public entity shall give primary consideration to the requests of the individual with disabilities."

It is noted that MSP does not have a current contract in place for sign language interpreter services. As part of document production, MSP provided copies of invoices from the Montana Deaf/Hard of Hearing Services, which includes sign language interpreter services provided for inmates ██████ and ██████ from November 2008 through April 2011. In 2008, sign language interpreter services totaled 23.5 hours for ██████ for Sex Offender (SO) class and 3.5 hours for ██████ (1 hour for new client meeting, 1.5 hours for an evaluation and 1 hour for parole board). In 2009, sign language interpreter services totaled 41 hours for ██████ that included 37.5 hours for SO class and 3.5 hours for a polygraph and 8 hours for ██████ for group therapy. In 2010, sign language interpreter services totaled 13.5 hours for ██████, which included 11.5 hours for group therapy and 1 hour for evaluation and 1 hour for parole board. In 2011, sign language interpreter services totaled 5 hours for ██████ for group therapy and 2.5 hours for ██████ for a meeting. After 2011, MSP decided to no longer procure a contract for sign language interpreter services. Although MSP does not have a current contract, they do utilize CSD (Communication Service for the Deaf, Inc.). Thus far, in 2012, CSD has provided 2.25 hours of sign language services for ██████ for therapist meetings.

MSP has not provided sign language interpreter services for important events such as classification, disciplinary and medical appointments. 28 CFR Section 35.160 further states that “in some instances a notepad and written materials may be sufficient to permit effective communication, in other circumstances it may not. A qualified interpreter may be necessary when the information being communicated is complex, or is exchanged for a lengthy period of time. Generally, factors to be considered in determining whether an interpreter is required include the context in which the communication is taking place, the number of people involved, and the importance of the communication.”

Classification hearings, disciplinary hearings, parole board appearances, and health care appointments are important events and equally effective communication for inmates with disabilities is critical and must be ensured.

During the review period, Inmate ██████ submitted a number of Offender/Staff Requests (OSR) requesting the assistance of a sign language interpreter. He received a major disciplinary and requested a sign language interpreter to assist him during his disciplinary hearing in December 2011. Even though he justified his need for the sign language interpreter by citing the ADA stating that it was for “communication being communicated is complex or is being communicating for a lengthy period of time especially if the content of the communication is important.” MSP denied him the services of a sign language interpreter based on the fact the hearing was in a one-on-one setting and not a group setting. The basis for this decision appears to be a letter for Dr. Jennifer Hartzel, Doctor of Audiology, dated August 31, 2011, in which she states that she consulted with Larry Wundrow who knows Mr. ██████ from previous visits and both agree that a sign language interpreter may be necessary for Mr. ██████ in group meetings and in situations where he is unable to utilize speech reading. Mr. Wundrow also submitted an undated letter in response to correspondence from MSP dated December 7, 9, and 29, 2011, stating, “An interpreter would provide Mr. ██████ with the best possible communication in group sessions.”

The DHO stated that ██████ did request an interpreter in a written statement but participated in the hearing in such a way that it was clear that he fully understood everything that was done and everything that was said and written, and that his defense of the cited rule violation was not compromised by a lack of an interpreter. ██████ was found guilty of the rule violation and sanctions were imposed.

Dr. Hartzel sent a letter to ██████ dated July 25, 2012, stating, “I am not sure where the prison received information from our office that you could communicate well with lip-reading only. Even with hearing aids and lip-reading, you will have difficulty understanding all that is said to you if the speaker is at a distance, facing away from you or if

there's any competing noise present. In order for you to receive all the information provided to you whether it's at a disciplinary hearing, church or group meetings, an ASL sign language interpreter would be most beneficial."

During the site visit, the ADA Program Expert interviewed Inmate [REDACTED], a deaf inmate, by writing notes. Using this method was lengthy but necessary, as a sign language interpreter was not used. During the interview, [REDACTED] stated that he has requested a sign language interpreter many times for medical appointments, religious events and group education. He is always denied and told that he can communicate via writing notes. He stated that one of his doctors refuse to communicate with him via writing notes because it takes too long. A file review indicated that [REDACTED] received a disciplinary while employed in the kitchen because he began mopping the floor too soon. He did not hear the kitchen supervisor tell him to stop and continued mopping. The kitchen supervisor then came up to him and began yelling and he received a write up for becoming agitated and throwing the mop down. He stated he did get upset but did not throw the mop down. He requested a sign language interpreter for his disciplinary hearing but was denied and told he can read lips and do it in writing. At his disciplinary hearing he was found guilty of the rule violation. It appears that not only was he disciplined for behavior that was a product of his disability; he was denied the services of a sign language interpreter for his disciplinary hearing and ultimately fired from the kitchen.

MSP has provided both [REDACTED] and [REDACTED] the services of a sign language interpreter for group settings, a 3.5 hours meeting for a polygraph examination for [REDACTED] and parole board appearances for [REDACTED]. However, MSP has not provided sign language interpreters or given primary consideration to their requests of a sign language interpreter for their classification hearings, disciplinary hearings or medical appointments. MSP did not base its decisions on the importance of the content of communication being communicated. Instead, MSP made these inmates rely on other forms of communication that were more difficult and less effective.

3.8 Staff Assistance

MSP does not provide staff assistance for inmates with disabilities as required by its policies and procedures.

Per **Policy No. DOC 3.4.1, *Offender Disciplinary System***, "staff assistance will be provided when a charged inmate is illiterate, does not understand English, or where the complexity of the issue makes it unlikely that the offender will be able to collect and present evidence." Similarly, **Procedure No. MSP 3.4.1, *Institutional Discipline***, states, "If the DHO determines an inmate is unable to prepare and present a defense, the inmate requests an advisor or interpreter, or the inmate claims a condition under the Americans with Disabilities Act, the DHO will grant a continuance (noting his/her reasons on the hearing decision form) and consult with the designated MSP ADA coordinator to ensure appropriate assistance and/or resources are provided to assist the inmate in presenting his case."

During the site visit, the ADA Program Expert interviewed DHO Ken Cozby who indicated that he has never received any training in effective communication and in his seven years as a DHO, he has never continued a hearing because an inmate may have had difficulty understanding the hearing. It is noted that Mr. Cozby was the DHO for both [REDACTED] and [REDACTED] disciplinary hearings in which they requested sign language interpreters and were denied. Those cases were not continued and appropriate assistance provided as required in **Procedure No. MSP 3.4.1**.

There is no system in place to prevent serious mentally ill inmates from being punished for behavior that is a product of their disability. There is no formal review of the disciplinary write up or assessment of the inmate to determine whether the conduct resulting in the write up is a product of the inmate's mental illness. The mentally ill inmate is not provided with a staff assistant or advisor to assist him during the disciplinary process or at the disciplinary hearing.

During the ADA Program Expert's interview with Jill Buck, Director of Mental Health, she stated that her staff receive incident reports on a regular basis and if the behavior was a result of their mental illness, she would intervene and the charges would be dismissed. She stated that there is no formal procedure in place and that a phone call would be made to the appropriate person. She stated that she could not recall a single time where an intervention by the mental health department was made on behalf of a mentally ill inmate for a disciplinary matter. DHO Ken Cozby related that he was unaware of any time that the mental health department intervened on behalf of a mentally ill inmate.

3.9 Inmate Assignments

MSP excludes inmates with disabilities particularly those with developmental and learning disabilities from many jobs if they do not have a high school diploma or GED.

28 CFR Section 35.130 states, "A public entity shall not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any service, program, or activity, unless such criteria can be shown to be necessary for the provision of the service, program, or activity being offered."

DOC 5.1.1, *Inmate Assignments*, states, "Assignment programs will accommodate inmates with disabilities in accordance with **DOC Policy 1.3.15, *Americans with Disabilities Act (ADA)***. The supervisor or individual requesting an inmate for assignment shall review the inmate's medical record for previously identified work restrictions. If work restrictions are identified, the supervisor or individual requesting an inmate for assignment will consult with the DOC or facility ADA coordinator to determine whether a reasonable accommodation can be made."

A review of MSP and MCE Job Descriptions and eligibility criteria indicate that a high school diploma or GED is required as a basis for employment for many jobs. A review of the essential functions for employment as a janitor or non-MCE laundry worker does not indicate the necessity of having a high school diploma or GED.

During the site visit, the ADA Program Expert toured the MCE laundry and spoke with the Laundry Supervisor, Dennis Keele. Mr. Keele informed the ADA Program Expert that he was not opposed to hiring an inmate with a disability to work in the laundry. Although he has been working in the laundry for the past 15 years, he could not recall ever hiring an inmate with mobility impairment even though he stated that there were positions that could accommodate that inmate.

MSP has a good program in place that hires inmate workers to assist inmates with disabilities with their activities of daily living. These positions are called infirmary aides and are used to assist inmates who reside in the infirmary as well as inmates housed in the general population.

The infirmary aides assist inmates with mobility impairment that need assistance with walking, pushing their wheelchairs, getting their food trays during meals, cleaning their cells, getting dressed, showering, grooming, incontinent care, etc. The health care department completes a Unit Care Plan that identifies the inmate's needs and the specific duties the inmate worker is to provide for that inmate. A correctional health care technician trains all infirmary aides as part of their worker orientation. During the site visit, the ADA Program Expert observed evening meal where the infirmary aides walked inmates or pushed them in their wheelchairs, stood in line, and picked up their food trays and eating utensils. He also observed an infirmary aide shaving an inmate and another cleaning an

inmate's cell. He spoke to several inmates who told him that the infirmary aides were very helpful and that they didn't know what they would do without their assistance.

MSP also assigns inmate library clerks to assist all inmates including inmates with disabilities with finding books, doing legal research and filling out legal forms.

3.10 Housing

a. Bed Assignments

Since MSP does not track its inmates with disabilities, it was not possible to get a sense of how many inmates with mobility impairment that needed a lower bed. As such, the ADA Program Expert could not make an assessment of whether MSP was providing the lower beds to the inmates with disabilities that needed them. During the site visit, the ADA Program Expert did speak to one inmate who stated that he was having difficulty getting on the top bunk but he indicated that he had not put in a request to staff out of fear he would be sent back to the High Side Facility.

MSP appropriately houses inmates requiring wheelchair accessible cells. Inmates who do not require wheelchair accessible housing but need their wheelchairs to ambulate outside of their cells were appropriately housed on the first tier. During the site visit, the ADA Program Expert spoke to one inmate in a wheelchair but who didn't require a wheelchair accessible cell who stated that he was initially placed in a cell on the side of the housing unit that did not have an accessible bathroom and shower area. He stated that staff would not allow him use of the accessible toilet and shower because he did not live in that section. He has since been moved and now has access to the accessible bathroom and shower. This is another clear example of the need for disability awareness. A simple modification should have been made to allow this inmate the use of the accessible toilet and shower.

b. Shower Chairs

During the site visit, the ADA Program Expert spoke to an inmate with mobility impairment who stated that he had difficulty standing in the shower and was always concerned about falling. The ADA Program Expert asked whether he used a shower chair and was told that the unit didn't have one. The Expert asked whether he had requested a shower chair and he stated he had not because he didn't want to cause a problem for himself. The Expert spoke with the prison staff and within ten minutes a shower chair was placed into the unit.

3.11 Count

MSP does not provide accommodations for inmates with mobility impairment during standing count.

Policy No. DOC 3.1.21, *Offender Count and Supervision*, states "stand-up count is a count that requires offenders to stand at their cell doors or end of beds to demonstrate they are physically present and not deceiving the observer through the use of dummies or other simulations." **Procedure No. MSP 3.1.21, *Inmate Count and Supervision***, states "stand-up count where inmates are required to stand at the door of their cells when a count is conducted. All inmates are subject to count procedures as outlined in this policy." However, this policy does not provide for any exceptions to the stand-up count for inmates with mobility impairment.

During the site visit, the ADA Program Expert spoke with an inmate with mobility impairment who told him that it was difficult for him to stand for the twenty minutes it takes for count to clear. The Expert told him that he should put in a

request to not stand during stand-up count. He told the Expert that he was unaware that he could put in such a request.

3.12 Body Searches

MSP does have policies regarding the removal of prosthetic devices for inmates with disabilities.

Procedure No. MSP 3.1.17A, *Searches*, states that during unclothed body searches staff will instruct the inmate to remove any prosthetic devices for inspection and that staff will perform unclothed body searches in an area which ensures privacy and dignity of the inmate whenever possible.

Although there is language stating that staff will instruct the inmate to remove the prosthetic device for inspection, there is no language stating that staff should provide any accommodations needed during the removal of a prosthetic device. For example, an inmate may need a chair to sit in when removing his prosthetic leg.

3.13 Announcements

MSP did not provide the ADA Program Expert with any policies regarding public address announcements for the Expert's review. As such, he was unable to review whether MSP makes accommodations for inmates with hearing impairment during public address announcements.

During the site visit, inmates with hearing impairment told the Expert that their cellmates inform them of any announcements that are made that pertain to them. Custody staff told the Expert that if an inmate does not respond to a public announcement within an appropriate time period, the inmate would be found and informed of the announcement. Custody staff also informed the Expert that, in most cases, inmates help each other. Therefore, inmates inform each other when it is time for work, school, meals, recreation yard, visits, etc. However, staff will follow up if the inmate is not where he is supposed to be including inmates with disabilities.

3.14 Telephone/TTY/TDD

MSP does have telephones with volume control and TTY/TDD phones for inmates with hearing and speech impairment.

28 CFR Section 35.161 states "Where an public entity communicates by telephone with applicants and beneficiaries, TDD's or equally effective telecommunications systems shall be used to communicate with individuals with impaired hearing or speech."

Policy No. DOC 3.3.7, *Offender Access to Telephones*, states "Offenders with hearing and/or speech disabilities, will be afforded access to a Telecommunications Device for the Deaf (TDD) or comparable equipment. Public telephones with volume control will also be available to offenders with hearing impairment."

During the site visit, the ADA Program Expert observed telephones with volume control and the TTY/TDD device, which is located in facility control and can be transported where needed.

3.15 Television

MSP does provide accommodations for inmates with hearing impairment to view and watch television programs.

MSP did not provide the ADA Program Expert with any policies or procedures on televisions for the review. As such, the Expert was unable to review whether there were any policies regarding accommodations for inmates with hearing impairment.

During the site visit, the ADA Program Expert did observe prison televisions with closed captioning. The Expert also observed the FM transmitters that inmates with hearing impairment can use to hear television programs.

3.16 Emergency Evacuation

MSP does provide accommodations for inmates with disabilities during emergency evacuation.

Procedure No. MSP 3.2.10, *Fire and Life Safety*, provides a MSP/MCE Fire Drill Report Form that is completed during immediately after an evacuation. One of the questions asks “Were inmates with disabilities evacuated?” A Disabled Inmate Housing Unit Locator is located in each housing unit and lists the names of inmates who may need assistance during an evacuation. These include inmates with mobility impairment, hearing impairment, and dementia or other mental illnesses.

3.17 Library Services/Inmate Legal Access to Courts

28 CFR Section 35.160 states “A public entity shall furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity conducted by a public entity.”

Procedure No. MSP 5.3.2, *Library Services*, states that inmates in locked housing units and MDIU will be provided onsite library services. During the site visit, the ADA Program Expert interviewed the librarian on the Low Side Facility who indicated that inmates who cannot come to the library such as inmates with disabilities are provided library services upon request. She also indicated that inmates with vision impairment can utilize the inmate computers to enlarge the font on the computer screen and can obtain large print copies of documents upon request. She also indicated that inmates who cannot read because of vision impairment or those with learning disabilities could receive audio books via the Reading for the Blind program. The library also provides inmate library assistants and clerks to assist inmates in accessing library services.

Procedure No. MSP 3.3.2, *Inmate Legal Access to Courts*, states that reasonable accommodations for legal access will be made for indigent inmates, inmates with disabilities. Inmates in locked housing units and those with disabilities preventing them from accessing the libraries may access available legal material by sending an OSR to the Librarian who will process the requests.

3.18 Requests for Accommodation

MSP has a good process in place regarding requests for accommodation.

Policy No. DOC 1.3.15, *Americans with Disabilities Act*, states “Offenders in secure facilities are first encouraged to resolve their requests for accommodation at the lowest level possible; for example, with their unit managers. However, offenders may also directly route any written request for accommodation by using an Offender/Staff

Request (OSR) form to the locally designated facility or program ADA staff member or the Department ADA Coordinator. “

As part of document production, the ADA Program Expert reviewed approximately 300 OSR forms requesting accommodation. The majority of the requests were for a 13” television due to vision impairment. This issue has been made moot since all inmates can now order a 13” television. It is noted that OSR forms are readily available to the inmate population, are answered by the appropriate person, and are processed and completed in a timely manner. With the exception of requests for sign language interpreters, the ADA believes the responses to the requests were generally appropriate. Inmates who were not satisfied with the response to their requests for accommodation could elevate it to the grievance process.

3.19 ADA Grievances/Appeals

MSP has a good process in place to respond to ADA grievances or complaints of discrimination.

28 CFR Section 35.107 states “A public entity that employs 50 or more persons shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by this part.”

Procedure No. MSP 3.3.3, *Inmate Grievance Program*, provides the procedures of the grievance program including the informal resolution, formal grievance process, time limits, extensions, and exhaustion. Inmates who are not satisfied with their responses to their ADA request for accommodation may elevate their issue to the grievance process.

As part of document production, the ADA Program Expert reviewed 28 grievances, mostly informal, and found the majority of the responses to be appropriate and completed within the specified time frames stated in MSP 3.3.3.

4. CONCLUSIONS

The purpose of the Programmatic Assessment was to determine whether MSP was compliant under the Americans with Disabilities Act and relevant Federal Court orders and agreements with respect to inmates with disabilities having equal access to its programs, services, and activities.

While MSP is making significant progress towards substantial compliance with the ADA in some areas, it does not do so in many others. A program that demonstrates significant progress MSP’s Library Services and access to the courts. Although the library does not have audio books on site, inmates who cannot read can obtain audio books through the Reading for Blind program. Inmates who cannot physically access the library can receive those services through the on-site process where library services are brought to the inmate. This can be obtained via a request to the librarian. The library has several inmate library assistants to help all inmates including inmates with disabilities access recreational books and legal books and materials. The library also has computers for use by the inmate population including inmates with disabilities. The library provides copies of all documents in large print upon request.

However, the ADA Program Expert finds that MSP does not have a comprehensive ADA compliant structure in place regarding its policies and procedures and programs for the identification of inmates with disabilities, the tracking of inmates with disabilities and their corresponding accommodation needs, and a process for sharing that disability

and accommodation need information with the custody, program, and free staff. As a result, staff are unaware of the accommodation needs of inmates with disabilities and do not provide them consistently and appropriately. This is particularly true for inmates with developmental disabilities who cannot advocate for themselves and will not request assistance from staff. Staff must be aware of whom the inmates with disabilities are, and staff has a duty to be proactive in ensuring their needs are met.

Specific areas of concern include:

- *Staff Training* - MSP does not provide specific and detailed training or direction to its staff regarding accommodations needed for equally effective communication when engaging with inmates with disabilities during critically important events such as classification hearings, disciplinary hearings, health care appointments, and appearances before the parole board.

As a result of a lack of policy and procedural direction, custody staff are not provided the necessary training that would inform them of their affirmative responsibilities, nor is their direction given in post orders regarding accommodations needed by inmates with disabilities for standing count, body searches or announcements.

- *Disability Awareness* - As result of the lack of policy and procedural direction and training, staff lacks the disability awareness needed to assist them when engaging with inmates with disabilities. For example, when conducting stand-up count, if the staff know that it is difficult for an inmate with mobility impairment to stand for a prolonged period of time, an accommodation is more likely to be provided and the inmate may be allowed to sit down on their chair or bed after they have been counted and wait there until count clears. If staff have an understanding of how difficult and ineffective it is to communicate through lip reading especially when engaging in important events such as classification, disciplinary, parole board or health care appointments, greater attention would be given to the primary method of communication and preference of the inmate. Additionally, if staff are aware that an inmate needs the assistance of a sign language interpreter, preparations for providing the sign language interpreter are more likely to be made in advance of the scheduled event. Moreover, if staff received training on disability awareness, they would be less likely to discipline an inmate for behavior that is a product of their disability rather than a product of willful disobedience.
- *Inmate Orientation* - MSP's orientation process does not provide sufficient information regarding what services and accommodations are available for inmates with disabilities at MSP. The information provided in the orientation process outlines a variety of subjects such as the ADA, grievance and appeal procedures, classification, detainers and warrants, rules and regulations, and disciplinary process. The information is too complicated and there are not enough breaks in between subjects. Inmates with developmental or learning disabilities would find it very difficult to absorb all the information being presented. However, the orientation class is presented verbally and with the use of power point slides, so inmates with vision impairment and inmates who cannot read can hear the presentation. Inmates with severe hearing impairment with the ability to read can read the slides. It is noted that the font on some of the slides is quite small due the amount of information contained on the slide, which would make reading the slide difficult. MDIU staffs do not provide any of the orientation materials including the Orientation Handbook in alternate formats such as large print.

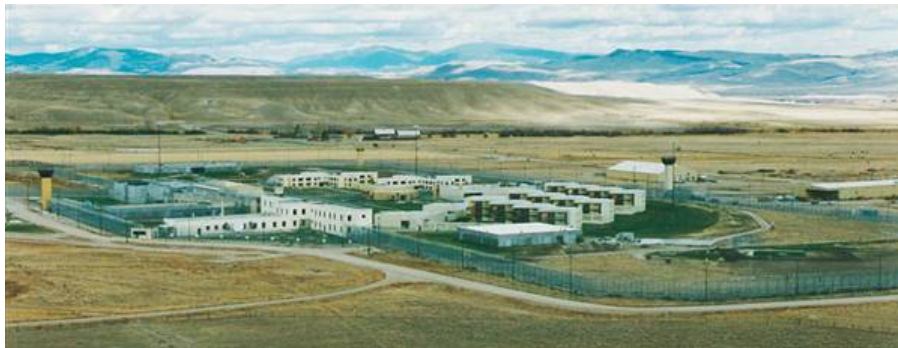
- *Prison Employment and Vocational Training* - Moreover, the ADA Program Expert finds that inmates with disabilities are excluded from many jobs and vocational training. A high school diploma or GED is required for vocational training and many of the jobs at MSP. Inmates without a high school diploma or GED cannot work in the industries even if they can perform the essential functions of the program, with or without reasonable accommodation. Inmates with learning disabilities who have plateaued in their academic education without receiving a high school diploma or GED often can benefit from vocational training that would lead to employment after incarceration. However, they are categorically excluded from vocational training because of the lack of high school diploma or GED. These hiring practices are discriminatory and violate the ADA and the Federal Court's Stipulated Settlement Agreement that states in pertinent part: "The Defendants shall develop and implement plans to integrate the disabled inmates into the mainstream of the institution."
- *Availability of Alternate Learning Environments* - MSP does not provide accommodations for inmates with developmental or learning disabilities to be removed from the regular academic education program and placed in an alternative learning environment as an accommodation if they cannot make progress toward their GED. These inmates are just kept there until they either quit or become a behavioral problem with no opportunity to pursue vocational training. Inmates in locked housing are provided cell study and provided no assistance from a teacher. The teacher merely gives the work and picks it up. As such, there is no assistance provided for inmates with learning or developmental disabilities.

5. RECOMMENDATIONS

- a. That MSP develop a comprehensive program to identify inmates with disabilities including those with developmental and learning disabilities.
 - i. That MSP identify needed accommodations for inmates with disabilities.
 - ii. That MSP track inmates with disabilities and their associated accommodation needs in OMIS.
 - iii. That MSP require disability and accommodation needs be placed in the file and recorded on classification documents.
 - iv. That MSP share disability and accommodation needs to its staff that need them.
- b. That MSP amend its policies, procedures and post orders to include accommodations for inmates with disabilities in count, body searches, announcements, telephone/TDD, equally effective communication, and inmate orientation.
- c. That MSP provide ADA training specific to staff duties. Training specific to equally effective communication should be added. Training specific to staff assistance should be added. An emphasis on disability awareness should be added.
- d. That classification staff, disciplinary officers, and staff involved in parole board provide and document whether and how equally effective communication was achieved during their contacts with inmates with vision, hearing or speech impairment and those inmates with learning or developmental disabilities.
- e. That MSP provide inmates with developmental disabilities or severe mental health concerns staff assistance during the classification or disciplinary process.

- f. That mental health review disciplinary write-ups and provide an assessment as to whether the inmate's behavior was a product of his disability.
- g. That the requirement for vocational training be amended to include inmates without a high school diploma or GED so long as the inmate can perform the essential functions of the program, with or without reasonable accommodation and that he could benefit from the program.
- h. That MSP put more emphasis on the hiring of inmates with disabilities.
- i. That MSP develop internal audits to be conducted by prison managers and supervisor to ensure that compliance with the ADA is met and continues.

FACILITY ACCESSIBILITY SURVEY REPORT



OVERVIEW & EXECUTIVE SUMMARY

I OVERVIEW / SCOPE OF SERVICES

Montana State Prison (MSP) and the Americans Civil Liberties Union (ACLU), contracted with Paul L. Bishop, Architect to perform an accessibility survey of 32 facilities per the following list:

Facility No.	Facility Name	Description	Completion Date
2	Administration Building (Wallace)	Staff Offices	1979
3	High Security Gym	Gymnasium	1950
4	Security Services	Visiting, Satellite	1976
5	Infirmery	Health Services	1985
6	Low Support (Rothe Hall)	Offices,	1968
7	Low Security Gym	Gymnasium	1984
8.1	Unit D	Housing	1990
8.2	Unit A	Housing	1976
8.3	Unit B	Housing	1976
8.4	Unit C	Housing	1976
9	Chapel	Religious	1979
10	High Kitchen / Dining	Dining	1976
11.1	Unit HSU-1 (Close Unit 1)	Housing	1979
11.2	Unit HSU-2 (Close Unit 2)	Housing	1979
11.3	Unit LHU-2 (Close Unit 3)	Housing	1986
12	High Support		1982
12.1	High Visiting	Visiting	1982
13	Unit LHU-1 (Maximum Security)	Housing	1986
16	Warehouse	Industries	1986
17	MVM / Vocational Training	Industries	1975
18	Industries Furniture / Upholstery	Industries	1997
19	Tag Plant	Industries	1975
20	Maintenance Shops	Industries	1976
23	Laundry / Voed	Industries	1995
26	Dry Room / Change House	Industries	1995
28	Food Factory	Industries	2000
29	Industries Dining	Dining	2000

32	Central Reception (Martz Diagnostic	Reception Center	1968
35	Canteen / Warehouse	Industries	2007
37	Ranch Office	Offices	Unknown
	Dairy	Industries	1949
	Work & Re-Entry Dorm (Honor Dorm)	Housing	Unknown

This survey and report is an effort to identify accessibility barriers as defined according to the 1991 Americans with Disabilities Act Standards for Accessible Design (Revised July 1, 1994) and/or the 2004 ADA/ABA Accessibility Guidelines (commonly referred to as the 2004 ADAAG). Although “ADAAG” is the commonly used term for the 1991 ADA Standards, the term technically applies to the Guidelines published by the United States Access Board. When the Guidelines are codified into law by the United States Department of Justice, they become Standards and are enforceable as law.

The field survey for Montana State Prison was conducted using proven accessibility survey instruments. Collected data was reviewed and analyzed for appropriate solutions to remove the barriers. The Survey Reports following this Overview & Executive Summary includes the observed barrier and a recommended solution per item.

The field surveys were performed during the week of September 17, 2012. Limited programmatic information was provided by MSP representatives.

II OVERVIEW OF ADA REQUIREMENTS AS APPLICABLE TO MONTANA STATE PRISON

A. BACKGROUND OF THE ADA

The Americans with Disabilities Act of 1990 (ADA) is civil rights legislation designed to extend civil rights protection to persons with disabilities.

There are four Titles to the Americans with Disabilities Act. Title II is the one that applies to Public Entities such as MSP.

Title II Public Services and Transportation - Prohibits state and local governments from discrimination by requiring "program accessibility". Program accessibility can be attained by rescheduling and/or relocating programs to accessible locations or by making physical facility changes, called "structural changes" in the ADA. Program accessibility must be achieved to the extent that it does not cause "an undue burden" to the Public Entity. See **§35.150 Existing Facilities** below.

28 CFR, PART 35 --NONDISCRIMINATION ON THE BASIS OF DISABILITY IN STATE AND LOCAL GOVERNMENT SERVICES is the document that describes the ADA requirements for Public Entities such as MSP. These requirements include:

§35.105 Self Evaluation – requires that all Public Entities were to have evaluated all of their services, policies and practices to determine if they are all accessible to persons with disabilities. The Self evaluation was to have been completed by July 26, 1993. We have been provided with a copy of a Self Evaluation Workbook dated October 1, 2006 that describes the level of ADA

compliance at MSP at that time. The Workbook identifies certain elements of ADA compliance, such as how the contact information for the ADA Coordinator is made available to inmates and how programmatic access is achieved to the library program. However, the Workbook is relatively brief and does not address such issues as disabled inmates' access to appropriate housing and work opportunities.

It should also be noted that corrective work to remove architectural barriers to program access did not begin with the Americans with Disabilities Act. Previous requirements to prepare a Self Evaluation and Transition Plan and to remove architectural barriers began with Section 504 of the Rehabilitation Act of 1973 for public entities receiving federal funding.

§35.107 Designation of responsible employee and adoption of grievance procedures – MSP has designated Cynthia Davenport as the ADA Coordinator and an effective grievance procedure is in place.

§35.150 Existing Facilities – requires that “a Public Entity shall operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities.” However, the law does not require a “public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. In those circumstances where personnel of the public entity believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, a public entity has the burden of proving that compliance with § 35.150(a) of this part would result in such alteration or burdens.

The decision that compliance would result in such alteration or burdens must be made by the head of a public entity or his or her designee after considering all resources available for use in the funding and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, a public entity shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits or services provided by the public entity.” We are not aware that MSP determined that any action that would have improved access to any of the services, programs and activities represent a fundamental alteration of those services, programs or activities or would result in an undue financial burden.

35.150(b)(1) indicates that a public entity is not required to make structural changes in existing facilities where other methods are effective in achieving compliance. 35.150(d) also requires that In the event that structural changes are required to achieve program accessibility, the Public Entity shall develop by January 26, 1993 a Transition Plan setting forth the steps necessary to complete such changes. Structural changes were to have been completed by July 26, 1995. We are not aware of any structural changes that were performed at MSP between January 26, 1993 and July 26, 1995.

It should be noted that the requirements for a Self Evaluation and Transition Plan under the ADA are taken from Section 504 of the Rehabilitation Act of 1973, which applied to projects that

received federal funding. The ADA extended those requirements to Public Entities receiving state or local funding.

§ 35.151 New construction and alterations – requires that newly constructed and altered facilities built by or on behalf of Public Entities shall be fully accessible if construction commenced after January 26, 1992. Public Entities had the option of using the Uniform Federal Accessibility Standards (UFAS) or ADAAG as the technical standards for new construction and alterations.

28 CFR Part 35 was amended on September 15, 2010 and included a new section:

§ 35.152 Jails, detention and correctional facilities, and community correctional facilities.

(b) Discrimination prohibited.

(1) Public entities shall ensure that qualified inmates or detainees with disabilities shall not, because a facility is inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of, the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

(2) Public entities shall ensure that inmates or detainees with disabilities are housed in the most integrated setting appropriate to the needs of the individuals. Unless it is appropriate to make an exception, a public entity–

(i) Shall not place inmates or detainees with disabilities in inappropriate security classifications because no accessible cells or beds are available;

(ii) Shall not place inmates or detainees with disabilities in designated medical areas unless they are actually receiving medical care or treatment;

(iii) Shall not place inmates or detainees with disabilities in facilities that do not offer the same programs as the facilities where they would otherwise be housed; and

(iv) Shall not deprive inmates or detainees with disabilities of visitation with family members by placing them in distant facilities where they would not otherwise be housed.

(3) Public entities shall implement reasonable policies, including physical modifications to additional cells in accordance with the 2010 Standards, so as to ensure that each inmate with a disability is housed in a cell with the accessible elements necessary to afford the inmate access to safe, appropriate housing.

It should be noted that Title II does not define “barrier” as does Title III for Public Accommodations. Similarly, Title II entities are not required to remove physical barriers even if they are “Readily Achievable”, since this concept does not apply to Public Entities. As described in §35.150, a Public Entity is required to identify all programs, services and activities and to determine if people with disabilities are provided nondiscriminatory access to them. An example of a “service” at MSP would be a toilet within a prison cell; if there are no accessible cells/toilets with grab bars as required by the 1991 ADA Standards or UFAS, that

would be an example of lack of program access. Another example would be a path of travel leading to a building where a program (e.g., gymnasium) is provided that has a slope of 10%. While this latter condition could be addressed by providing an assistant that could push a wheelchair user up the steep slope, it is doubtful that the former condition could be made fully accessible by other means than installing grab bars.

Citing past case law is also illustrative of the nexus between correcting conditions that are non-compliant with the 1991 ADA Standards or UFAS and the obligation to provide program access. “While the ADAAG regulations clearly are not dispositive in this case, they can still provide guidance as to whether an existing facility is readily accessible and usable by individuals with disabilities.” Brown v. County of Nassau, 736 F. Supp. 2d 602, 617 (E.D.N.Y. 2010). The United State Supreme Court has also noted that “older facilities” can avoid structural changes by “relocating services to alternative accessible sites” or using other methodology, but if these measures are “ineffective in achieving accessibility” the public entity is “required to make structural changes.” Tennessee v. Lane, 541 U.S. 509, 532 (2004). Title II “imposes on public entities the requirement that they provide qualified disabled individuals with meaningful access to public services, which in certain instances necessitates that public entities take affirmative steps to remove architectural barriers to such access in the process of altering existing facilities.” Ability Ctr. of Greater Toledo v. City of Sandusky, 385 F.3d 901, 913 (6th Cir. 2004).

Therefore, there are two different criteria that apply to the facilities at MSP:

For those facilities that were constructed prior to January 26, 1992, structural changes are required if any condition that does not comply with ADAAS limits or prevents the ability of an inmate with a disability to access any program at MSP and other methods do not provide a similar level of compliance.

FACILITIES CONSTRUCTED OR ALTERED AFTER JANUARY 26, 1992:

For construction projects that have been performed after January 26, 1992 (including alteration projects), all work should be in compliance with ADAAS. For projects that commenced construction after March 15, 2012, all work should be in compliance with the 2010 Americans with Disabilities Act Standards (ADAS), which for Title II entities includes 28 CFR Part 35.151 and the 2004 ADAAG. Refer to the detailed description of both standards in Section D below.

B. BACKGROUND OF LANGFORD V. SCHWEITZER, CAUSE NO. CV 93-46-H-DWM-JCL

This case is a class action lawsuit that alleged various conditions at Montana State Prison, including lack of accessibility for inmates with disabilities. A settlement agreement was reached on October, 1994, on the case of Langford v. Racicot CV No. 93-46-H-LBE. As part of the Agreement, the parties agreed to employ impartial experts to conduct on-site investigations to determine whether the Defendants are in substantial compliance with the terms of the Settlement Agreement. Over the years the parties have stipulated to the dismissal of numerous aspects of the lawsuit. However, the issues requiring compliance with the ADA remains unresolved. The ADA provision reads as follows:

Section 9 – ADA Compliance

Defendants shall ensure the inmates with disabilities are not excluded from participation in, or denied the benefits of housing, services, facilities and programs because of their disabilities. The Defendants shall develop and implement plans to integrate the disabled inmates into the mainstream of the institution.

The parties have appointed Paul L. Bishop, Architect and their subconsultant, Subia Consulting Services, LLC as the mutual expert to perform a review of Program Access as well as a Barrier Survey of all of the physical conditions at MSP. The scope of our services is to provide a report to the Court whether the Defendants are in substantial compliance with the Settlement Agreement.

C. DESCRIPTION OF MONTANA STATE PRISON

Montana State Prison occupies 68 acres just West of Deer Lodge, Montana and has a total capacity of 1,467 inmates. The facility is separated by differing security perimeters that can be described as Low Side (minimum security), High Side (higher security) and Maximum Security, each of which contain the housing and support buildings for each classification. Additionally, the Martz Diagnostic Intake Unit is where new inmates arrive to be evaluated for placement. There is also the Industries Area, which includes numerous structures that provide employment opportunities for inmates, including Motor Vehicle Maintenance (MVM), Furniture & Upholstery, Tag Plant and maintenance shops. Outside the fenced perimeter lies the Warehouse and Canteen, which provide additional employment opportunities. Located a short distance from the main prison campus are the Work (Honor) Dorm, Ranch Administrative Office and Dairy. Inmates in these areas have a greater degree of freedom of movement and are even allowed to operate motor vehicles as part of their employment.

The Prison's first buildings were constructed in 1965 and buildings have been added and altered since that time, as well as additions and alterations to the exterior path of travel. The housing units tend to be poured-in-place concrete or masonry construction, which makes renovations to these buildings difficult and costly. Other buildings such as the Work Dorm and Industries buildings are wood frame or modular metal buildings, which are much easier and less costly to alter.

MSP recognizes that the entire facility is not compliant with the 1991 ADA Standards and/or 2010 ADAS and has had a policy in place for several years that provides assistants to wheelchair users. The assistants are provided as Infirmity Aides and can assist inmates who use wheelchairs with transportation throughout the facility. The assistants are commonly referred to as "pushers". "Pushers" are paid a wage for their efforts and are provided training for their duties. The ability to have a "pusher" mitigates numerous physical barriers at MSP, such as excessive slopes and level changes, since the wheelchair user is not required to negotiate these conditions on their own. Also refer to Section 3.9 Inmate Assignments in the ADA Program Assessment section.

The Low Side Housing provides a total of 421 cells in the A, B, C and D Units. Currently the D Unit is the only Housing Unit that accommodates inmates with disabilities. However, the A Unit contains the SOP ITU (Sexual Offender Program Intensive Treatment Unit) and CD ITU (Chemical Dependency Intensive Treatment Unit). Low Side offenders in the SOP ITU program and some of the offenders in the CD ITU are housed in A Unit as in-patient users, but there are no accessible cells. Based upon the total number of 108 cells at A Unit, 3 accessible cells should be provided for the SOP ITU and CD ITU in-patient inmates or these programs

should be relocated to an accessible location. Based upon the requirements of the 2010 ADAS, MSP should provide a minimum of 9 accessible cells on Low Side, but D Unit only provides 5 accessible cells. If the 3 additional accessible cells are added to A Unit, 1 accessible cell in D Unit would bring the total accessible cells to 9. Since the scoping requirement for 2% accessible cells was not included in ADAAG, the Safe Harbor provision does not apply.

Group for inmates in the out-patient CD ITU is usually held in either the A Unit conference room or Rothe/Low Support building conference room. Group time and individual time is available and typically last 1-1/2 – 2 hours. Bathroom breaks are provided for the inmates, so the common area restrooms serving the meeting spaces are required to be accessible to accommodate prisoners with disabilities.

Inmates receive treatment in the CD ITU as well as AM (Anger Management) program in the conference rooms within A Unit, B Unit, Work / Re-entry Center (formerly the Work Dorm) and High Side. High Side offenders are housed in either High Side Unit 1 or High Side Unit 2 and are called out for group. The groups were held in the Laundry building but are to be relocated in the High Support building's classrooms.

It should be noted that as of September 2012, MSP documents indicate that 3 inmates who use wheelchairs were housed at B Unit, even though there are no accessible cells in that Unit. The same documents indicate 18 inmates who use wheelchairs are housed at D Unit, which exceeds the capacity provided by the 5 accessible cells. We recommend that MSP provide additional accessible cells to accommodate the actual population of wheelchair users.

Also of note is per a letter dated March 22, 2013 from James Whaley, Chief of the State of Montana Design and Construction Bureau, the State Legislature is considering an appropriation to replace the A, B & C Units with new housing units new units will be built to the 2010 ADAS. When complete, these improvements should address all of our concerns regarding these 3 facilities.

Other factors that should be considered when reviewing this Report:

- MSP representatives indicated that a 3,000 SF addition is proposed for the Ranch Administration Office. While design documents for the proposed addition were not reviewed in the preparation of this Report, it is possible that the proposed addition could address all of the cited barriers for this facility.
- Inmates at the Work (Honor) Dorm operate motor vehicles as part of their job duties but we were not informed of the availability of any hand-operated vehicles. We recommend that MSP obtain hand-operated vehicles to accommodate wheelchair users who live in the Work Dorm.
- Although there are no ADA requirements for the clear vertical height above a bunk bed when a disabled inmate occupies the lower bunk, some cell arrangements provide limited headroom above the lower bunk, resulting in the inability for a wheelchair user to transfer onto and off the bunk from their wheelchair and remain erect. Studies have indicated that a minimum vertical clearance be provided above the top of the mattress to provide adequate space for an adult male to sit upright.
- Although we are not aware of any code requirements for call buttons in any areas other than the Infirmary, where inmates would require immediate staff assistance due to their medical condition, we recommend that MSP install call buttons in other areas such as cells in the event that an inmate requires immediate assistance for reasons other than medical emergency.

- Although a 60 inch diameter maneuvering space to permit a wheelchair user to enter a space, turn around and exit the space is only required by the 1991 ADA Standards and 2010 ADAS in certain locations, we recommend that all spaces that inmates use should be provided with this space. Examples of such spaces would be staff offices where inmate interviews and assessments are performed.
- Although the ADA has not yet adopted requirements for examination tables in medical facilities, the US Access Board has recently proposed guidelines that address the need for adjustable examination tables that enable disabled patients to transfer between the table and their wheelchair. More information can be obtained at <http://www.access-board.gov/medical-equipment.htm>. We recommend that MSP consider purchase of new medical diagnostic equipment that complies with the Access Board recommendations.
- Some cell configurations provide grab bars at toilets but the grab bars are not mounted to a wall. Since many individuals who use grab bars grasp the grab bar and lean against the adjacent wall for support, we recommend that MSP design any future facilities and remodels to provide a wall surface adjacent to all toilet facility grab bars.
- On the day of the inspection of Rothe Hall, the elevator was not in service. Since the elevator is the only accessible route to the 2nd Floor, proper maintenance of this feature is critical to provide disabled inmate access to the activities and programs held on the 2nd Floor.
- We observed 2 Evac Chairs on the 2nd Floor of Rothe Hall on the day of the inspection. Evac chairs and similar products are part of an accessible evacuation plan for multistory buildings. Although the ADA is not a building or fire code, it does require that inmates with mobility impairments be evacuated in a swift and safe manner in the event of a building emergency, since elevators typically shut down automatically during those occasions.
- We were informed by MSP that accessible desks will be provided in the MDIU classroom by the end of September.

D. TECHNICAL REQUIREMENTS / STANDARDS

1991 ADA Standards & 2010 ADAS

The 1991 Americans with Disabilities Act Accessibility Guidelines (ADAAG), published by the U.S. Access Board and adopted as the Americans with Disabilities Act Standards for Accessible Design (ADA Standards) by the US Department of Justice, was the Federal technical standard applicable when constructing new facilities or altering existing public accommodations to comply with ADA up until March 15, 2012. The U.S. Department of Justice published new requirements in 2004 that have now been codified as the 2010 Americans with Disabilities Act Standards (ADAS), which replaced the 1991 ADA Standards as of March 15, 2012. For Title II entities

Since MSP is subject to Title II of the ADA, the primary obligation to inmates of the Prison (as opposed to employees who are covered under Title I of the ADA) is to provide access to individuals with disabilities to all of its services, programs and activities. This concept was adopted directly from Section 504 of the Rehabilitation Act, which required access to programs and activities that received Federal assistance.

28 CFR Part 35 Nondiscrimination on the Basis of Disability in State and Local Government Services; Final Rule, which implements subtitle A of Title II of the ADA, Public Law 101-336, prohibits discrimination on the basis of disability by public entities. Per the preamble to Subpart D – *Program Accessibility, Section*

35.149 Discrimination Prohibited, this requirement applies to “*facilities now in existence, because the cost of retrofitting existing facilities is often prohibitive.*” The preamble goes on to note “*the regulation makes clear, however, that a public entity is not required to make each of its existing facilities accessible.*” The law requires that Public Entities must make all of its programs accessible “*except where to do so would result in a fundamental alteration in the nature of the program or in undue financial and administrative burdens.*”

Therefore, even in the absence of a technical requirement, a public entity must provide access to all of its programs subject to the exceptions described above.

The 2010 ADAS introduced new scoping requirements that did not appear in the 1991 ADA Standards. Specific to MSP, ADAS *Section 232 Detention Facilities and Correctional Facilities* includes requirements that had no precedent in the 1994 ADAAG. -As of March 15, 2012, MSP is required to comply with these new scoping provisions for new construction and alteration work subject to the exceptions provided under Title II.

Among these new requirements are:

- 1) At least 3% of the total number of cells in a facility are required to provide mobility features that comply with ADAS Section 807.2. These features include a 60 inch diameter turning space, accessible bench, clear floor space at the bed for a wheelchair transfer, and accessible toilet and bathing facilities that serve these cells.
- 2) At least 2% of the total number of cells are required to be equipped with audible emergency alarm systems.
- 3) Patient bedrooms or cells in infirmaries are required to comply with the percentages listed above, as well as applying to medical isolation cells.
- 4) Special holding cells are required to provide a minimum of 1 cell that complies with Section 807.2. Such cells include cells for the purpose of orientation, protective custody, administrative or disciplinary detention or segregation, detoxification or medical isolation.
- 5) Visiting areas serving accessible cells shall be accessible on both the visitor and inmate side.

E. CONCLUSIONS & RECOMMENDATIONS

Part 1 *ADA Program Access Assessment* details several areas where we believe that MSP is not in substantial compliance with the ADA and relevant court orders due to their policies and procedures. Additionally, we believe that due to inadequacies with the physical plant, MSP does not comply with the ADA in providing access to all programs for inmates with disabilities. The one area of MSP that presents the most physical barriers is the Industries Complex. Barriers in this area include excessive slopes along the exterior path of travel connecting these buildings and leading to other areas, lack of accessible work stations and lack of compliant restroom facilities. Coupled with the program and policy deficiencies noted in the *ADA Program Access Assessment* section, it is apparent that inmates with disabilities are significantly underrepresented in the worked population. It is also apparent that an inmate with a disability would encounter difficulties in most of the Industries Complex work environments. The good news is that providing accessible work stations is a relatively simple and inexpensive matter, especially given the wealth of production capabilities available at MSP.

As noted elsewhere in this report, the housing units do provide accessible cells but the sanitary facilities are not designed and constructed to enable ease of use for inmates with disabilities. Part of this condition can be attributed to the age of the buildings, since most were designed prior to the passage of the ADA. The housing units are typically constructed of poured-in-place concrete or concrete masonry, which are construction types that are difficult and expensive to alter. However, MSP has renovated some of the High Side housing areas to provide greater accessibility, including the addition of wheelchair lifts due to the floor level differences from the entrance level to the cells.

Some of the necessary changes to the sanitary facilities at the housing units can be accomplished without significant difficulty or expense. However, other changes will require replacement of penal-style plumbing fixtures, grab bars, shower configurations, tiled surfaces and other more involved features.

Seating within dining facilities and housing unit day rooms is another area where MSP has not provided equal access to inmates with disabilities. Although some stools have been removed at existing fixed dining tables, the tables do not provide a knee space that allows a wheelchair user to roll completely under the table and have use of a dining surface equivalent to able-bodied inmates. Replacement tables should be provided in these spaces so that wheelchair users can dine comfortably with other wheelchair users as well as able-bodied companions.

The MSP campus is generally quite accessible due to its level topography. A system of concrete sidewalks is provided through the facility that experience a large amount of pedestrian traffic from inmates and staff. Concrete is a far longer-lasting paving material than asphalt or other surfaces and usually provides the greatest degree of accessibility due to its longevity and relative need for maintenance. However, we encountered a number of areas where the running slope and cross slope exceed the maximum allowed by the ADA. Additionally, we observed a number of areas where the concrete has moved vertically and level changes along the Path of Travel exceed the maximums allowed by the ADA. We recognize that the climate in Deer Lodge creates some of these conditions as a result of "frost heave". However, care should be exercised in the design of pavement sections so that this effect is minimized. Level changes as a result of pavement movement should be ground down to compliant dimensions on a regular basis.

Although MSP employs a reasonably effective program whereby Infirmary Aides (i.e., "pushers") assist inmates with disabilities in circulating throughout the facility, the ADA encourages independent movement if it is feasible to do so. The pusher system would only be considered an equivalent alternative to structural barrier removal if a pusher was available at all times to all inmates needing such assistance. Additionally, pushers should receive proper training from MSP staff on how to provide safe assistance to wheelchair users. Therefore, the exterior pedestrian route should be made as compliant as possible. Several buildings provide emergency exits that lead to unpaved areas, creating a hazard for inmates with disabilities who exit through those doors. All required emergency exits should be provided with compliant walks that connect to the pedestrian circulation path to enable these inmates to reach a safe distance away from a building in the event of an emergency.

Independent circulation is also required for inmates with visual impairments. Some of the newer buildings at MSP provide Braille and tactile signage, but most do not. Tactile restroom signage is seldom encountered, or when provided is often located on the door instead of on the wall adjacent to the door. This can result in an injury to a partially sighted or blind inmate who is trying to read the sign by touching the tactile characters. MSP staff indicate that verbal assistance is provided to direct inmates with visual

impairments to appropriate locations, but once again this is not the intent of the ADA since it does not permit independent movement.

Several other features at MSP can be easily corrected, such as replacement of knob-type door hardware with level hardware, replacement of non-compliant door thresholds and provision of accessible changing benches and loop-handled shower curtain wands. We recommend that these barrier removal efforts be undertaken as soon as possible, especially where it can be demonstrated that the changes will significantly increase the level of accessibility.

III SURVEY REPORT OVERVIEW

A. REPORT CONTENTS AND FORMAT

This report is based upon field observations of barriers observed, as defined by ADAAG and ADAS. The complete report includes the following items:

Section 1 - The Overview & Executive Summary includes an overview of the legal and technical requirements affecting MSP and an explanation of the report format. The Appendix contains abbreviations commonly used throughout the *ADA Survey Reports*.

Section 2 - The ADA Survey Report is the detailed report of the barriers observed at each facility, recommendations for compliance and budget costs.

There are columns in the Reports labeled “ADAAG Reference” and “ADAS Reference”. ADAS References are only provided if an element was not in compliance with the 1991 ADA Standards and any renovation work must now comply with the more restrictive requirements of the 2010 ADAS.

If a location is noted with a number in parentheses following the location, the number indicates that multiple locations of that particular barrier occur.

The attached Barrier Summaries for each of the facilities surveyed indicate each item that does not comply with the 1994 ADAAG (or 2010 ADAS as appropriate) as potential barriers to program accessibility. While equivalent access is possible through alternate means, it must be clearly evident that these other methods provide equivalent access.

B. ASSUMPTIONS & CONSIDERATIONS

In performing this survey, there are a number of parameters which are defined to document the application of the requirements of the 1991 ADA Standards and 2010 ADAS. We have divided these assumptions and considerations about the survey into three broad categories: *Facility, General, and Technical Assumptions*. While some of the General issues may sound very technical, the concepts are important and have general implications.

Facility Assumptions / Considerations

1. *Inmate Areas versus Staff Areas* – All areas that inmates currently use were surveyed for purposes of identifying and correcting barriers as part of this survey. However, we did not survey staff work stations since they would be included as part of a reasonable accommodation per Title I of the ADA. Areas where inmate workers perform their job duties are not considered staff work areas for the purpose of this study.
2. *Shower Spray Attachment* – We were informed by MSP staff that due to safety concerns, flexible spray attachments at accessible showers are maintained by staff and provided on an as-needed basis when inmates make a request. The inmate is responsible for attaching and detaching the spray hose, or if they are not able to perform this task, can request an Infirmary Aide.

General Assumptions

1. *Operations and Program Information* - We were provided with limited program information concerning facility operations. Solutions for barrier removal were developed based upon the our observations of existing conditions and the limited information provided.
2. *Safe Harbor Provision* - The survey and citations applied are based upon whether a particular element complied with the 1991 ADA Standards; if so, then compliance with the 2010 ADAS is not required even if the ADAS is more stringent than the 1991 ADA Standards. This is referred to by the USDOJ as the "Sate Harbor Provision". However, if an element did not comply with the 1991 ADA Standards then it is now required to comply with the 2010 ADAS. One example would be a wall switch or control used by inmates; if the height of such an element was 52" and a front approach is possible, this complies with the 1991 ADA Standards and would not be cited. However, if the height of this item was 56", it would not be in compliance with the 1991 ADA Standards and would now have to be lowered to 48" in conformance with the 2010 ADAS.
3. *Doors Operated by Inmates* - We were provided information as to the majority of which doors are operated independently by inmates. If we were informed that a particular door is independently operated even part of the time by inmates, we provided citations if the door did not comply with any requirements of the 1991 ADA Standards or 2010 ADAS. If a particular door is never operated by an inmate, we did not cite any noncompliant conditions.
4. *Plumbing Fixture Counts* - Some solutions may be proposed that reduce the fixture count in a restroom. MSP should verify if this is compliant with applicable building codes and operational requirements.
5. *Preliminary Solutions* - Some recommended solutions are very preliminary in nature and require more detailed design study and code verification to confirm feasibility and costs. The solutions are intended to provide scoping for a designer to provide construction documents for implementation.
6. *No Testing of Hidden Conditions* - Barrier removal solutions were based upon field observations of existing conditions. No testing of operational systems such as fire alarms or review of building, fire or health codes was undertaken as part of this survey. A good example is grab bar blocking in wood frame buildings that is required to meet specific loads for safety.
7. *Visual Fire Alarms* - 1991 ADA Standards requires that visual alarms be located 80" above the floor or 6" below the finish ceiling, whichever is lower. Although we encountered visual alarms above and below this range, we did not cite any of these locations, since adequate equivalent coverage may still be provided. We recommend that MSP employ the services of a licensed fire protection engineer to survey all facilities on campus to determine if the visual alarms comply in all locations.
8. *Drinking Fountains* - If a building has multiple stories and an elevator, our recommendation is to provide a full accessible hi/lo fixture on alternating floors with directional signage at the non-accessible fixtures, if the horizontal travel distance is not excessive. If a compliant "high" fixture is available on a floor, a companion "low" fixture is recommended for the adjacent floor. The

assumption is that the travel time to go to an adjacent floor via elevator is acceptable accommodation.

9. *Braille / tactile exit signage* – The 2010 ADAS requires Braille / tactile exit signage where illuminated exit signs are provided at doors. We did not verify if illuminated exit signs are actually required by the building code at any doors; if one was provided we recommend that a Braille / tactile exit sign be provided. Also see Item 6 under *Technical Assumptions* below.
10. *Furnishings, Fixtures & Equipment (F,F&E)* – Both the 1991 ADA Standards and 2010 ADAS apply to fixed or built-in elements of buildings, structures & site improvements. Therefore, non-fixed elements such as classroom desks would not be covered by technical requirements. However, since the lack of accessibility of these elements can limit or prevent access to programs, activities and services at MSP we strongly urge that these elements be reviewed for compliance with the most relevant technical criteria.

Technical Assumptions:

1. *Detectable Warnings Requirement* - Barriers were not cited requiring the use of detectable warnings on curb ramps and other areas as a warning to visually impaired individuals that they are about to enter a hazardous area. Detectable warnings with truncated domes, as specified in the 1991 ADA Standards have been controversial due to issues of maintainability, safety for those with various impairments, including vision, and locational requirements. A Joint Final Ruling issued by the U.S. Department of Justice, the U.S. Access Board and the U.S. Department of Transportation called for temporary suspension of the requirement pending further study until July 26, 2001. The suspension expired and detectable warnings were again made a requirement. However, the 2010 ADAS removed the requirement for detectable warnings so we have opted to apply the most current standard. It is anticipated that the USDOJ will adopt the requirements for detectable warnings for Public Rights-of-Way when the final rule is approved, but detectable warnings will not be required within private or public property.
2. *Slip Resistance* – 1991 ADA Standards Section 4.5 and Appendix Section A4.5.1 require floors on accessible routes and accessible room areas to be "slip-resistant". The Access Board recommends a coefficient of friction (COF) of 0.6. Ramps require a higher COF of 0.8.

MSP should be aware that some VCT (vinyl composition tile) and sheet vinyl floors in common use may not have a COF of 0.6, and therefore would not be considered slip-resistant. Floors like polished vinyl are very slippery. Furthermore, water, contaminants and floor treatments lessen slip-resistance from the cited coefficients. Detailed product information is only now being documented and made available. However, the actual testing to determine slip resistance requires expensive equipment and is not easily performed in place. Therefore, testing was not included in the scope of work.
3. *Doorway Widths* – although the 1991 ADA Standards and 2010 ADAS require that doorways provide a 32" clear opening when doors are open 90 degrees, this assumes a typical manual wheelchair measuring approximately 26" – 27" in width, plus room for the wheelchair user's hands on each side and sufficient room on each side to maneuver through the opening without scraping

the user's knuckles. However, several inmates at MSP are provided Prison-issued manual wheelchairs that have an overall width of approximately 31". This would result in the need for a 36" – 37" clear width opening to provide an equivalent clearance for the wider wheelchair. The Survey Reports list conditions where a 32" clear opening is not provided but since we were not provided with detailed information as to which facilities accommodate the users of the wider wheelchairs, we did not cite doorways wider than 32". We recommend that MSP consider using 36" minimum doorway widths when designing new facilities or performing alterations on existing facilities.

4. *Door Closers* –the 1991 ADA Standards and 2010 ADAS do not have a requirement for maximum opening force for exterior hinged doors. However, most building codes require the maximum opening force to be no greater than 8.5 pounds. Although the ADA does not contain a similar requirement, it has been our experience that this requirement is extremely necessary for many individuals to enter a building. It has been our experience that existing door closers can only be adjusted to within approximately 3 pounds of their current operating force. Accordingly, we have recommended replacement of door closers as opposed to simply adjustment where the opening pressure exceeds 8.5 pounds.
5. *Dimensional Tolerances* – Section 3.2 of the 1991 ADA Standards states that all dimensions are subject to conventional building industry tolerances for field conditions. Although many studies have been performed to determine what are acceptable dimensional tolerances, there are relatively few widely accepted tolerances. The 2010 ADAS Section 104.1.1 *Construction and Manufacturing Tolerances* which reads "All dimensions are subject to conventional industry tolerances except where the requirement is stated as a range with specific minimum and maximum end points." One example would be a toilet centerline dimension from an adjacent wall; whereas the 1991 ADA Standards required an absolute 18" dimension and the 2010 ADAS allows a range of 16" – 18", a toilet located 18-1/2" from the side wall might have been considered within conventional industry tolerances under the old regulations but not the new ones.

It should be noted that in the case of new construction, design documents can often lead to dimensions that exceed 1991 ADA Standards /2010 ADAS maximums and minimums, such as a ramp that is designed with a 1:12 slope. The contractor may construct the ramp with a slight field tolerance which results in a ramp that slightly exceeds the 1:12 slope, which is actually the maximum slope allowed, not a desired slope. Therefore, design documents should specify maximums and minimums where applicable and also allow for field tolerances. Advisory 104.1.1 of the 2010 ADAS states that "recognized tolerances are not intended for design work."

For the purpose of this Survey Report, we did not cite existing field conditions within 1/2" of those specified in 1991 ADA Standards /2010 ADAS, if it can be assumed that the dimensional discrepancy will not result in any significant decrease in accessibility. Examples would be grab bars mounted at 33-1/2" above the floor (where 33" is the required height) or a ramp handrail with a 1-5/8" diameter (where 1-1/2" diameter is the maximum allowed).

6. *60 Inch Diameter Maneuvering Space* – Although the ADA does not specifically require a 60 inch diameter turnaround space in all rooms and spaces, the lack of such space can make it extremely difficult for wheelchair users to enter a room, turn around and exit the room without significant

difficulty. Areas such as housing cells and staff offices (where inmate interviews are often conducted) should be designed and furnished to the greatest extent possible so that this space is provided.

7. *Building, Fire & Health Codes* – Our scope of services did not include verifying items such as the required number of exits in a facility and their location, areas of refuge, if visual fire alarms are required or design requirements in areas where food is prepared. We recommend that MSP consult with qualified consultants in each discipline to determine if any barrier removal required by the ADA affects these other code requirements.
8. *Call Buttons* – Although the ADA does not include any requirements for call buttons in standard housing cells, MSP might consider inclusion of a system when performing alterations of existing cells and the construction of new housing units. Call buttons are provided in the Infirmary areas so that inmates can contact staff in the event of a medical emergency. However, due to security reasons a call button system can be an effective method to alert staff to a security problem within housing cells.
9. *Signage* – Section 216.1 of the 2010 ADAS contains an exemption for compliance for signage in detention and correctional facilities that is not located in public use areas. Although the exception is provided, it is our recommendation that compliant tactile and visual signage be provided if possible to ensure program accessibility.
10. *ADAAG vs. ADAS* – If a condition complies with the 2010 ADAS but not the 1991 ADA Standards, we did not cite it in the Survey Reports. One example would be a toilet that measures 17” to the centerline of the fixture from the side wall. Since the 2010 ADAS allows a range of 16” -18”, we believe the condition complies with the most current requirements even though it does not comply with the previous requirements, which would technically qualify for the Safe Harbor exception.

We are here to support you. Please don't hesitate to call for clarifications on our report.

Respectfully submitted,

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APPENDIX

ABBREVIATIONS

AC	Asphalt Paving
ADAAG	ADA Accessibility Guidelines
AFF	Above Finished Floor
BLDG	Building

CONC	Concrete
DF	Drinking Fountain
E	East
ELEV	Elevator
EXT	Exterior
FLR	Floor
INT	Interior
ISA	International Symbol of Accessibility
LF	Lineal Feet
LBF	Pounds Force
LBS	Pounds
MAX	Maximum
MIN	Minimum
N	North
RR	Restroom
S	South
SF	Square Feet
W	West