



**Expert Monitor's Report**  
**Americans with Disabilities Act (ADA)**  
**(First Non-Confidential Status Report)**

**Babu v. Ahern**  
**Consent Decree First Status Report**  
**Case No. 5:18-cv-07677-NC**  
On-Site Review: February 23-24, 2022

**Submitted to:**

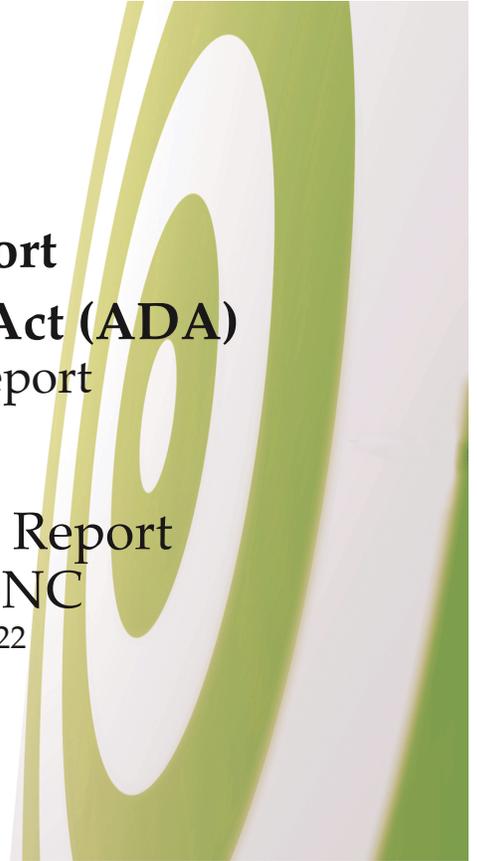
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## Cover Letter

This document serves as an introduction of the attached non-confidential monitoring report regarding the status of the Alameda County Sheriff's Office (ACSO) and the Alameda County Behavioral Health's (ACBH) (collectively, Defendants) implementation of the Babu, et al. v. County of Alameda, Consent Decree within the Santa Rita Jail (SRJ). This report addresses the ADA-related provisions that were assigned to Sabot Consulting to monitor and rate. Feedback from the Joint Experts was sought in preparation of this report, and feedback was provided to the other Joint Experts on their individual reports.<sup>1</sup>

This first monitoring report is based on document and data review, an on-site tour, as well as interviews with staff and incarcerated persons. Prior to and after conducting the first tour, policies and various documents were requested and reviewed.

The on-site tour was conducted on February 23-24, 2022. The on-site monitoring tour consisted of walking through areas of SRJ, interviewing staff and incarcerated persons, and assessing compliance with the Consent Decree's ADA requirements.

The Americans with Disabilities Act (ADA) Joint Expert greatly appreciated the time spent interviewing and interacting with ACSO custody staff, Wellpath healthcare personnel Alameda Forensic Behavioral Health (AFBH), ACBH staff, and numerous incarcerated persons. The staff and incarcerated persons were generous with their time and appeared to be transparent and willing to discuss any related concerns or challenges related to the Consent Decree's ADA requirements that they may have encountered. Staff members were open in discussing relative plans for overall improvement in working towards implementing the Consent Decree's ADA requirements. During the tour, the ADA Joint Expert was provided full access to the SRJ, and all requests for information and jail access were granted. Although relevant ADA documents were made available for review while on-site, per the agreement between the Parties and the Joint Experts, these documents were not removed from SRJ. Instead, the documents were subsequently produced confidentially by Defendants subject to the entered Protective Order in this matter. Some of the documents requested were not provided because they either were missing, do not yet exist, or are in the development or planning stage. In many cases, the team of Joint Experts will be working with ACSO, ACBH, and AFBH staff in the development and/or review and comment period as related to various policies, post orders, forms, training materials, real-time networked tracking system, identification process for incarcerated persons with psychiatric, intellectual/developmental, and learning disabilities, as well as other documents.

The ADA Joint Expert recognizes that ACSO/AFBH are in the beginning stages of implementing the provisions of the Consent Decree. We believe the County will continue to work collaboratively with the Joint Experts in making progress and putting systems in place, including the development of policies and procedures, forms, screening tools, and training, which will assist the County in moving towards achieving substantial compliance with the Consent Decree requirements. For future monitoring, the County will need to provide completed documents, completed forms, tracking lists, disciplinary reports, ADA Request for Accommodation, Grievances, etc., for the ADA Joint Expert to measure ACSO/AFBH's compliance with the requirements of the Consent Decree.

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<sup>1</sup> Refer to the Joint Expert First Monitoring Report cover letter, May 13, 2022, for information on how the provisions were assigned and numbered.

This report will outline areas within the Consent Decree provisions, where policies, processes, documentation, forms, and training will need to be developed or revised/modified in order to meet the requirements of the Consent Decree.

As related to the ADA-related provisions (which cover psychiatric, intellectual/developmental, and learning disabilities only), some examples of Consent Decree requirements include:

- **Disciplinary Process**
  - As part of the disciplinary process, staff must take into consideration the incarcerated person's behavior and any mental health or intellectual/developmental disability.
  - ACSO must ensure that as part of the disciplinary process, AFBH is consulted and provides a clinical opinion as to whether an incarcerated person's mental illness or intellectual/developmental disability was a contributing factor to the misconduct, in addition to determining the appropriateness of action. Note: There was no documentation provided to assess AFBH's compliance for this initial phase, but this will be examined for the next expert monitoring tour.
  - Classification staff must consult with the contracted medical provider and/or AFBH staff prior to taking action on housing assignments, program assignments, disciplinary action, or transfers in and out of the facility for incarcerated persons who are diagnosed as having a psychiatric illness.
  - ACSO/AFBH must have updated policies to reflect these and other requirements of the Consent Decree.
  
- **Americans with Disabilities Act (ADA)**
  - ACSO must ensure that the ADA Coordinator is dedicated solely to ADA-related duties.
  - ACSO must ensure that the ADA Coordinator or ADA Unit staff meet with incarcerated persons identified as having a Psychiatric Disability, as required by the Consent Decree.
  - ACSO must develop training materials in consultation with the Joint Experts.
  - The ADA Coordinator must have sufficient staffing to assist ACSO/AFBH in complying with the Consent Decree Requirements.
  - ACSO/AFBH must develop and implement policies and practices to ensure effective communication ("Effective Communication policy") with individuals with Psychiatric Disabilities at intake and during due process events (e.g., grievance processes, classification processes, disciplinary processes, pre-release processes, and conditions of release process), religious activities, vocational and educational programs, and clinical encounters including mental health appointments.
  - The Effective Communication policy must include, at a minimum, processes for:
    - (a) identifying individuals whose cognitive, intellectual, or developmental disability pose barriers to comprehension or communication;
    - (b) promptly providing reasonable accommodation(s) to overcome the communication barrier(s); and
    - (c) documenting the communication, including the method used to achieve effective communication and how the relevant staff person determined that the individual understood the encounter, process, and/or proceeding.
  - ACSO must ensure that the ADA Unit meets with incarcerated persons with an SMI diagnosis or a cognitive, intellectual, or developmental disability who have

- effective communication needs in advance of any disciplinary hearing that may result in an increase in security level and/or placement in more restrictive housing.
- In consultation with the ADA Joint Expert, AFBH must develop and implement healthcare screening questions to identify individuals with intellectual, developmental, psychiatric, or learning disabilities, including a secondary screening assessment.
  - The intellectual screening/testing policy and process must be comprehensive, using recognized instruments, to allow psychiatrists, psychologists, licensed clinical social workers, or other trained clinicians to determine whether incarcerated persons are intellectually/developmentally disabled.
  - The intellectual screening/testing policy and process must include an examination for:
    - Low cognitive functioning (usually IQ of 75 or below);
    - Concurrent deficits or impairments in adaptive functioning (the abilities necessary to care for oneself and to access programming and services in the jail setting)
  - The intellectual screening/testing policy and process must identify adaptive support needs or adaptive deficits that may be present in the following areas:
    - Health and safety
    - Socialization Skills
    - Academic Skills
    - Communication Skills
    - Leisure
    - Self-Advocacy/Use of Incarcerated Person Resources
    - Self-Care Skills
    - Self-Direction
    - Work
  - ACSO/AFBH must ensure the policy for the management of intellectual/developmentally disabled incarcerated persons is revised to include monitoring requirements for staff (e.g., housing unit staff and work supervisors) as well as requirements and/or recommended frequencies for staff to provide supports such as coaching, assisting, monitoring, and prompting, tailored to each individual's needs.
  - ACSO/AFBH must ensure the policy for the management of intellectual/developmentally disabled incarcerated persons is revised to include staff responsibilities regarding safety/vulnerability/victimization issues, special concerns, and accommodation needs, including:
    - Classification screening for predator/victimization concerns with other incarcerated persons within the housing unit, as well as other related responsibilities. Housing protocols for intellectually/developmentally disabled incarcerated persons (possible clustering/semi-clustering approach).
  - ACSO must ensure incarcerated persons with potential learning disabilities are referred to an appropriately qualified community provider, such as 5 Keys, for screening using a screening tool such as the Test of Adult Basic Education.
  - ACSO/AFBH must provide reasonable modifications and accommodations as necessary to ensure that qualified individuals with Psychiatric Disabilities have equal access to programs, services, and activities that are available to similarly situated individuals without disabilities.
  - ACSO must implement an electronic, real-time networked tracking system, including a grievance module ("ADA Tracking System") to document and share

internally, information regarding an individual's disability(ies) and disability-related accommodations

- ACSO must maintain a readily available mechanism for individuals to make a request for reasonable modifications independent of the grievance system (“ADA Request”) and ensure the review and response timelines of the Consent Decree are followed.

In presenting the attached report, the ADA Joint Expert wants to thank the Sheriff, ACSO, AFBH, Wellpath staff, County Counsel, and the incarcerated persons.

## Summary of Ratings

The Summary of Ratings chart (below) includes the following ratings:

- Partial Compliance (PC): 18 rated items
- Noncompliance (NC): Three (3) rated items
- Item Not Yet Ratable – Not Applicable (INJR – N/A: Five (5) rated items)

Requirement	Rating
508. Development of written policies and procedures.	PC
509. Disciplinary process for incarcerated persons designated as SMI.	NC
510. Practice of seeking an opinion on the level of discipline, use of disciplinary diets, timelines for disciplinary proceedings and the imposition of Discipline. Placement in a higher classification.	PC
1000. Working with Joint Expert, in the development and implementation of policies, procedures, and forms and training.	INJR – N/A
1001. Employment of a full-time, dedicated ADA Coordinator.	PC
1002. ADA Coordinator and/or her or his staff personally meeting with each newly identified individual. In the meeting within 14 days of designation.	PC
1003. ADA-related training for staff.	INJR – N/A
1004. The ADA Coordinator staffing.	PC
1005. ADA Unit staff certification course	INJR – N/A
1006. Effective Communication policy.	INJR – N/A
1007. ADA staff meeting with incarcerated persons with SMI diagnosis or a cognitive, intellectual, or developmental disability in advance of any disciplinary.	NC
1008. Development and implementation of healthcare screening questions.	PC
1009. Referrals to the ADA Unit for incarcerated persons with Psychiatric Disabilities.	PC
1010. Issuance of the Jail handbook orientation materials including instructions on how to request disability-related accommodations, how to contact the ADA Coordinator, and how to file a grievance regarding ADA-related issues.	PC
1011. Provision of reasonable modifications and accommodations.	PC
1012. Provision of Effective Communication, therapeutic and/or protective housing unit, counseling/therapy (group and individual), medications and Qualified Mental Health Professional input prior to removing privileges and/or otherwise imposing discipline, and any modifications necessary to ensure equal access to programs.	PC
1013. Provision of reasonable accommodations for learning-related disabilities.	PC
1014. Provision of reasonable accommodations for individuals with cognitive, developmental, and/or intellectual disabilities.	PC
1015. Implementation of an electronic, real-time networked tracking system.	INJR –N/A
1016. Provision of Psychiatric Disabilities report to Housing unit, education, and program office staff.	PC
1017. Security classification for incarcerated persons with Psychiatric Disabilities.	PC

1018. Access to yard and day room and recreation time for incarcerated persons with Psychiatric Disabilities.	PC
1019. Equal access to all programs, activities, and services for incarcerated persons with Psychiatric Disabilities.	PC
1020. Requests for reasonable modifications independent of the grievance system ("ADA Request").	NC
1021. Grievance system that provides for prompt and equitable resolution of complaints by individuals with Psychiatric Disabilities who allege disability-related violations.	PC
1022. The ADA Coordinator and ADA Unit review of ADA-related grievances.	PC

## Findings

The following are excerpts from the Consent Decree provisions (the “Plan”) assigned to Rick Wells (ADA Joint Expert) for monitoring. The specific provision language is followed by the Expert’s findings and recommendations.

### **Disciplinary Process**

**508. Defendants' shall develop written policies and procedures, as set forth in Section IV(A), which shall require meaningful consideration of the relationship between the individuals' behavior and any mental health or intellectual disability, the efficacy of disciplinary measures versus alternative measures that are designed to effectuate change in behavior through clinical intervention, and the impact of disciplinary measures on the health and well-being of prisoners with disabilities. The delivery of mental health treatment shall not be withheld from Behavioral Health Clients due to Discipline. Behavioral Health Clients shall also not be subject to Discipline for refusing treatment or medications, engaging in self-injurious behavior, or threats of self-injurious behavior.**

### **Finding: Partial Compliance**

#### **Assessment:**

The ADA Joint Expert notes that existing policies contain some of the requirements of the Consent Decree.

However, there was no documentation (completed Inmate Disciplinary Hearing Reports and completed AFBH Review forms) for the ADA Joint Expert to measure ACSO/AFBH compliance with the Consent Decree requirements.

During the on-site interviews, ACSO staff acknowledged that there are inconsistencies relative to clinical consults for the incarcerated person disciplinary process. Specifically, some staff indicated that clinical consults are not conducted, and other staff stated that consults are done, but not consistently.

#### **Recommendations:**

- 1) It is recommended that ACSO incorporate policy language that specifically addresses that Behavioral Health Clients shall not be subject to discipline for refusing treatment or medications, engaging in self-injurious behavior, or threats of self-injurious behavior. Such language can be incorporated into a revised policy.
- 2) When considering incarcerated person disciplinary write-ups, staff must exercise meaningful consideration of the relationship between the individuals' behavior and any mental health or intellectual/developmental disability.
  - a. This is predicated on a comprehensive disability identification process, a real-time computerized tracking mechanism, and ensuring that all staff has access to at least general disability identification, effective communication, and adaptive support needs information (as applicable) for all incarcerated persons.
- 3) All ACSO disciplinary reports pertaining to behavioral health and intellectually/developmentally disabled incarcerated persons must be forwarded to the AFBH manager for review. The AFBH manager must render an opinion as to whether an

incarcerated person's mental illness or intellectual/developmental disability was a contributing factor and for appropriateness of action and must note their findings on the AFBH Review Form.

- 4) Upon receipt from the Classification Disciplinary Deputy, appropriate AFBH staff must complete the Adult Forensics Behavior Health (AFBH) section of the Communication Form for appropriateness of action.
  - a. Note: it is unclear whether such a form has been developed or implemented. If not, the ADA Joint Expert understands that ACSO/AFBH has six (6) months to incorporate such a form. ACSO/AFBH must work with the ADA Joint Expert(s) and Class Counsel to review, comment, and provide recommendations for all new and revised related forms. Completed forms must be provided as part of the document review for future monitoring tours.

**509. ACSO shall include Qualified Mental Health Professionals in the disciplinary process relating to SMI clients. For Behavioral Health Clients who are not SMI, ACSO shall notify a Qualified Mental Health Professional of the initiation of the disciplinary process, including the basis for disciplinary action, and shall include a Qualified Mental Health Professional as appropriate in the disciplinary process. Defendants shall develop a form for Qualified Mental Health Professionals to use that allows them to indicate:**

- (a) whether the reported behavior was related to mental illness or adaptive functioning deficits, including whether the behavior was related to an act of self-harm.**
- (b) any other mitigating factors regarding the individual's behavior, disability, or circumstances that should be considered.**
- (c) whether certain sanctions should be avoided due to the individual's underlying disability and/or mental health needs. The ACSO shall further ensure recommendations regarding whether the mental health of the individual impacted by their actions is appropriately considered, and proper interventions are provided to Behavioral Health Clients and avoid punishing Behavioral Health Clients for manifestations of their disabilities. To the extent ACSO chooses not to follow the Qualified Mental Health Professional's recommendations, ACSO shall document and explain in writing why the recommendation was not followed.**

**Finding: Non-Compliance**

**Assessment:**

The policies reviewed do not address the requirement to include a Qualified Mental Health Professional as appropriate in the disciplinary process. Specifically, the policies do not contain language relative to the requirement that ACSO must include Qualified Mental Health Professionals in the disciplinary process relating to SMI incarcerated persons. Nor do the policies address the requirement that ACSO must notify a Qualified Mental Health Professional of the initiation of the disciplinary process for Behavioral Health Clients who are not SMI, including the basis for disciplinary action.

There was no documentation (completed Inmate Disciplinary Hearing Reports and completed AFBH Review forms) for the ADA Joint Expert to measure ACSO/AFBH compliance with the Consent Decree requirements.

Regarding the requirement for the County to develop a form for a Qualified Mental Health Professional to use for the disciplinary process (as described above), the ADA Joint Expert notes that ACSO/AFBH has six (6) months to incorporate the relative forms.

During the on-site interviews, staff acknowledged that there are inconsistencies (at minimum) relative to clinical consults for the incarcerated person disciplinary process.

**Recommendations:**

- 1) It is recommended that policies be revised to incorporate language requiring that ACSO include Qualified Mental Health Professionals in the disciplinary process when SMI clients are involved.
- 2) It is recommended that policies be revised to incorporate language requiring ACSO staff to notify a Qualified Mental Health Professional of the initiation of the disciplinary process for Behavioral Health Clients who are not SMI including the basis for disciplinary action.
- 3) ACSO/AFBH must develop and implement a form (allowing for ADA Joint Expert and Class Counsel review and input) for a Qualified Mental Health Professional to use for the disciplinary process:
  - a. To identify whether the reported behavior was related to mental illness or adaptive functioning deficits, including whether the behavior was related to an act of self-harm;
  - b. To indicate whether there were any other mitigating factors regarding the individual's behavior, disability, or circumstances that should be considered; and
  - c. To identify whether certain sanctions should be avoided due to the individual's underlying disability and/or mental health needs. ACSO shall further ensure recommendations regarding whether the mental health of the individual impacted their actions are appropriately considered, and proper interventions are provided to Behavioral Health Clients and avoid punishing Behavioral Health Clients for manifestations of their disabilities. To the extent ACSO chooses not to follow the Qualified Mental Health Professional's recommendations, ACSO shall document and explain in writing why the recommendation was not followed.
- 4) It is recommended that Policy be revised to include the requirement for Qualified Mental Health Professionals to use the new form when required under the terms of the Consent Decree.

**510. Defendants shall limit the practice of seeking an opinion on the level of discipline that should be assessed from the ACSO staff authoring the report. Defendants shall cease the use of disciplinary diets in all cases other than food-related disciplinary cases. Defendants' policies shall include timelines for disciplinary proceedings and the imposition of Discipline. Placement in a higher classification, including placement to Restrictive Housing, is governed by the classification process outlined in Section III(C).**

**Finding: Partial Compliance**

**Assessment:**

The review of local policies finds the policies do not include language limiting the practice of ACSO seeking an opinion from the ACSO staff who authored the disciplinary report on the level of discipline that should be assessed.

The policies reviewed contain language requiring that staff cease the use of disciplinary diets in all cases other than food-related disciplinary cases.

The policies reviewed contain language requiring timelines for disciplinary proceedings and the imposition of Discipline.

There was no documentation (completed Inmate Disciplinary Hearing Reports and completed AFBH Review forms) for the ADA Joint Expert to measure ACSO/AFBH compliance with the Consent Decree requirements. The Expert will measure compliance during future monitoring tours in the review of disciplinary reports (or related documents) issued to SMI, Behavioral Health, Intellectual/Developmental, or learning-disabled incarcerated persons.

#### **Recommendations:**

- 1) It is recommended that policies be revised to incorporate language stating that ACSO shall limit the practice of seeking an opinion on the level of discipline that should be assessed from ACSO staff who authored the relevant disciplinary report(s).
- 2) ACSO/AFBH must provide copies of completed disciplinary reports (and related documents) to demonstrate proof of practice for these requirements.

#### **Americans with Disabilities Act (ADA)**

##### **ADA Coordinator**

**1001. ACSO shall continue to employ a full-time, dedicated ADA Coordinator at the Jail who shall, among other ADA-related responsibilities, oversee the following issues related to individuals with Psychiatric Disabilities: monitoring of the ADA Tracking System, ADA-related training, grievances, disciplinary reports, Message Request forms, requests for accommodations, classification actions, orientation materials, touring housing units and discussing ADA-related issues with incarcerated persons and staff (e.g., housing unit deputies, medical staff, mental health staff, dental staff, education staff, re-entry services staff, inmate program staff, library staff, religious services staff, etc.) as set forth below and on an as-needed basis, and any other ADA-related responsibilities as appropriate. The ADA Coordinator shall be strongly encouraged to serve in that role for at least five (5) years to provide for consistency and to maximize the benefit of the training and expertise of the ADA Coordinator. ACSO shall consult with the ADA Joint Expert regarding the Post order for the ADA Coordinator, and Plaintiffs' counsel shall have an opportunity to review and provide input prior to ACSO finalizing the Post order. The ADA Coordinator shall report up the chain of command. Additionally, the Compliance Captain shall oversee the day-to-day activities of the ADA Coordinator but shall not have the ability to re-assign the ADA Coordinator away from their ADA-related duties.**

#### **Finding: Partial Compliance**

##### **Assessment:**

Information obtained through Compliance Unit staff interviews indicates the Compliance Lieutenant, under the supervision of the Compliance Captain, serves as the ADA Coordinator. The Compliance Captain oversees the day-to-day activities of the ADA Coordinator. Currently,

the ADA Coordinator has ADA, American Correctional Association (ACA) accreditation, and PREA-related duties assigned to them.

The policy reviewed states, "An employee of the Sheriff's Office tasked with ensuring compliance with the Americans with Disabilities Act within the Detention and Corrections Division of the Alameda County Sheriff's Office. The staff member assigned as the ADA Coordinator shall be responsible for reviewing all documentation and documenting responses to all disability-related requests. The ADA Coordinator shall maintain files of each ADA inmate and incorporate the previously listed information." The Expert notes that the ACSO has six (6) months to develop and implement related post orders, job descriptions, or post orders to outline such information. Reportedly, the Post Order is in the draft phase, and the ADA Coordinator is currently maintaining a list of incarcerated persons on the ADA List and will be providing them via the SharePoint on a monthly basis.

Note: The ADA Joint Expert understands there may be occasional exigent circumstances whereas the Compliance Unit Captain may need to temporarily re-direct the ADA Coordinator (Compliance Unit Lieutenant) to other duties within the Compliance Unit's normal functions (e.g., ACA, PREA, etc.). However, the ADA Coordinator should not be re-directed or assigned to other duties outside the scope of the Compliance Unit.

#### **Recommendations:**

- 1) Policies must be revised or implemented to articulate the Consent Decree requirement for the ADA Coordinator position to be a full-time dedicated position at the Santa Rita Jail and to all have oversight responsibilities for the specific areas outlined above (from the Consent Decree) as well as other applicable ADA Coordinator duties.
- 2) ACSO must develop the ADA Coordinator post order in consultation with the ADA Joint Expert (and Class Counsel). The Post Order must include the duties/oversight responsibilities listed in the Consent Decree.
- 3) The ACSO must ensure the ADA Coordinator position is dedicated to ADA duties.

**1002. As soon as practical, but under no circumstances more than fourteen (14) days after an individual has been identified at intake or post-intake as having a Psychiatric Disability, the ADA Coordinator and/or her or his staff shall personally meet with each newly identified individual. In the meeting, the ADA Coordinator shall employ effective communication to assist the individual in understanding the rules of the Jail; explain how to request accommodations and what accommodations are available; ensure the individual has access to grievance forms to raise disability-related issues, and inform them that ADA Unit staff are available to assist the individual with disability-related needs. For any person identified as having a Psychiatric Disability who remains in the Jail for more than sixty (60) days, the ADA Coordinator and/or their staff shall meet with the individual to determine if their ADA-related needs are being met and at least every sixty (60) days thereafter. This meeting and any relevant notes regarding accommodation needs shall be documented in writing. Once the ADA Tracking System is implemented, this information shall be documented there.**

**Finding: Partial Compliance**

**Assessment:**

Although local policies do not contain language relative to the ADA Coordinator (and/or her or his staff) personally meeting with a newly identified incarcerated persons, one of the policy sections, titled, "Forms" describes a Record of Contact form. The policy states, "The Record of Contact Form will be filed in the ADA Coordinator's inmate files. The form will be used to document interaction or discussions the ADA Coordinator has with the inmate, staff or visitors regarding accommodations and ADA issues."

The ACSO provided a few examples of the Record of Contact Forms; however, there were no completed forms for incarcerated persons with psychiatric, intellectual/developmental, or learning disabilities. The ADA Joint Expert was unable to confirm whether such initial meetings are taking place within 14 days of arrival or identification or whether the ADA Coordinator or designee is using Effective Communication during the encounter.

There are no Record of Contact Forms, meeting notes, or other documented evidence to support whether the ADA Coordinator or designee meets with incarcerated persons that have a psychiatric, intellectual/developmental, or learning disability who remain at the Santa Rita Jail for more than 60 days (and every 60 days thereafter).

**Recommendations:**

- 1) Policies must be revised to include language requiring the ADA Coordinator (and/or her or his staff) to personally meet with a newly identified incarcerated person who has a psychiatric, intellectual/developmental, or learning disability as soon as practical but within 14 days after arrival or identification at the Intake process, or post-Intake process.
- 2) The ACSO must ensure the ADA Coordinator or designee conducts initial meetings as soon as practical but within 14 days of arrival or identification of an incarcerated person having a psychiatric, intellectual/developmental, or learning disability.
- 3) For initial meeting encounters as described above, the ADA Coordinator or designee must ensure Effective Communication is provided and documented.
- 4) The ADA Coordinator or designee must meet with incarcerated persons that have a psychiatric, intellectual/developmental, or learning disability who remain at the Santa Rita Jail for more than 60 days (and every 60 days thereafter).

**1003. After the initial ADA training is provided by the ADA Joint Expert, the ADA Coordinator shall be charged with providing ADA-related training to staff and with monitoring programs and work assignments to ensure meaningful access for all individuals with Psychiatric Disabilities.**

**Finding: Implementation Not Yet Required – Rating N/A**

**Assessment:**

N/A at this time

**Recommendations:**

- 1) The ACSO must work with the Joint Experts and Class Counsel to provide review and input prior to the approval of interactive component training materials. The training materials must be developed within six (6) months.

**1004. The ADA Coordinator shall have sufficient staffing to assist him or her (the “ADA Unit”). ACSO staff assigned to the ADA Unit shall be strongly encouraged to serve in that capacity for at least three years to provide for consistency and to maximize the benefit of the training and expertise of the Custody staff assigned to this unit. During any period where the ADA Coordinator is unavailable for any reason, a sergeant or higher-ranked individual shall fulfill the duties of the ADA Coordinator position until the ADA Coordinator becomes available or a replacement is appointed to the position. The ADA Coordinator position shall not remain vacant for more than ninety (90) days.**

**Finding: Partial Compliance**

**Assessment:**

The ACSO currently operates with a Compliance Unit with the following positions:

- One (1) Compliance Captain
  - Also serves as Consent Decree Project Manager
- One (1) Compliance Lieutenant (ADA Coordinator)
  - Currently has ADA, ACA accreditation, and PREA related duties
- One (1) Compliance Sergeant
  - Currently has ADA and ACA related responsibilities
- One (1) Compliance Deputy
  - Currently has ADA, ACA, and PREA related responsibilities

Reportedly, the Compliance Unit also has four (4) technicians, two (2) retired annuitants (extra help), and at times has one (1) or more deputies temporarily assigned due to being on "light duty" status. Staff indicated that the Compliance Unit has plans to add one (1) additional deputy position. It is unclear whether any of these positions have (or will have) any ADA-related responsibilities. Reportedly the SRJ Compliance Unit (under the supervision of the Compliance Unit Captain) has since expanded (subsequent to the submittal of the draft report). However, it is unclear as to what the staff expansion specifically includes. This will be examined for the next scheduled expert monitoring tour.

The County reported that during the rating period, there were no instances where the ADA Coordinator was unavailable or vacant for more than ninety (90) days.

**Recommendations:**

- 1) Recommend providing clarity (whether through local policy, post orders, employee job descriptions, or other documentation) as to the staffing within the "ADA Unit" or as to specific ADA Duties (and whether duties are exclusive to ADA as opposed to ACA, PREA, etc.) within the "Compliance" or "ADA" Units (within the larger "Compliance Unit").
- 2) The ACSO must provide documentation outlining job responsibilities for all positions (Including the below-listed positions) within the "Compliance" or "ADA" Units as related to incarcerated persons with psychiatric, intellectual/developmental, and learning disabilities. The clarification can be in the form of a post order, job description, local policies, or other documentation.
  - a. ADA Coordinator (as outlined in a previous section above)
  - b. ADA Sergeant
  - c. ADA Deputy
  - d. Technicians

- e. Retired Annuitants (extra help)
  - f. Temporary staff assignments
- 3) The ACSO must provide information as to any new or additional staff positions within the "Compliance" or "ADA" Units and anticipated timelines associated with activating the positions.
  - 4) The ACSO must work with the Joint Experts (and Class Counsel) in reviewing, making recommendations, and finalizing any new or revised Post Orders, job descriptions, policies, etc.
  - 5) Either local policies, the ADA Sergeant's Post Order, job description, or other documents should indicate the ADA Sergeant's responsibility to fulfill the duties of the ADA Coordinator position until the ADA Coordinator becomes available or a replacement is appointed to the position for occasions whereas the regularly assigned ADA Coordinator is unavailable for a period of time.

**1005. Within one (1) year from their initial assignment, all sworn staff assigned as ADA Unit staff, including the ADA Coordinator, shall attend and complete a nationally recognized certificate course designed for ADA coordinators and obtain a certification and maintain said certification with updates and continuing education courses. Any replacement ADA Coordinator, interim ADA Coordinator, or sworn staff assigned to the ADA Unit shall obtain their ADA certification within twelve (12) months of starting in the position.**

**Finding: Implementation Not Yet Required – Rating N/A**

**Assessment:**

All sworn staff assigned as ADA Unit staff, including the ADA Coordinator, have not attended or completed a nationally recognized certificate course designed for ADA coordinators or obtained a certification and maintained the certification with updates and continuing education courses. The Santa Rita Jail ADA Coordinator and ADA staff have one (1) year to obtain the certification from a nationally recognized certificate course designed for ADA Coordinators.

**Recommendations:**

- 1) The ACSO must ensure the ADA Coordinator and ADA staff complete a nationally recognized certificate course designed for ADA Coordinators.
- 2) The ACSO must apprise the ADA Joint Expert when staff is assigned to the ADA Unit to ensure staff obtains their ADA certification within twelve (12) months of being assigned.

**Effective Communication**

**1006. In consultation with the ADA Joint Expert, and in accordance with Section IV(A), Defendants shall develop and implement policies and practices to ensure effective communication ("Effective Communication policy") with individuals with Psychiatric Disabilities at intake and during due process events (e.g., grievance processes, classification processes, disciplinary processes, pre-release processes, and conditions of release process), religious activities, vocational and educational programs, and clinical encounters including mental health appointments. The Effective Communication policy shall include, at a minimum, processes for:**

**(a) identifying individuals whose cognitive, intellectual, or developmental disability pose barriers to comprehension or communication;**  
**(b) promptly providing reasonable accommodation(s) to overcome the communication barrier(s); and (c) documenting the communication including the method used to achieve effective communication and how the relevant staff person determined that the individual understood the encounter, process, and/or proceeding.**

**Finding: Implementation Not Yet Required – Rating N/A**

**Assessment:**

ACSO currently does not have an Effective Communication Policy or other policy that contains Effective Communication-related information. ACSO has six (6) months to develop and implement a related policy (whether a stand-alone policy) or with applicable requirement language outlined within existing local policies.

**Recommendations:**

- 1) ACSO must develop and implement an Effective Communication Policy or other policy that contains Effective Communication-related information within six (6) months. A separate stand-alone policy is highly recommended.
- 2) ACSO must ensure the Effective Communication Policy (language) articulates the requirements for staff to provide and log their Effective Communication efforts for significant types of encounters with incarcerated persons with psychiatric, intellectual/developmental, and learning disabilities as required by the Consent Decree.
- 3) ACSO must ensure that the Effective Communication policy includes the following:
  - a. Identifying individuals whose psychiatric, intellectual/developmental, or learning disability pose barriers to comprehension or communication;
  - b. Promptly providing reasonable accommodation(s) to overcome the communication barrier(s); and
  - c. Documenting the communication including the method used to achieve effective communication and how the relevant staff person determined that the individual understood the encounter, process, and/or proceeding.

**1007. For those individuals with an SMI diagnosis or a cognitive, intellectual, or developmental disability, who have effective communications needs, the ADA Unit shall meet with the individual in advance of any disciplinary hearing that may result in an increase in security level and/or placement in more restrictive housing. In order to provide Effective Communication, the ADA Unit shall discuss the upcoming event with the individual and ensure they are able to understand, participate, and communicate effectively.**

**Finding: Non-Compliance**

**Assessment:**

The ACSO did not provide completed Record of Contact Forms or any other documentation to support whether Compliance Unit ADA staff are meeting with incarcerated persons with psychiatric, intellectual/developmental, or learning disabilities prior to disciplinary hearings that could result in an increase in security level and/or placement in more restrictive housing.

## **Recommendations:**

- 1) The ACSO must revise local policies (or incorporate into a different policy) to include the requirement for staff from the ADA Unit to meet with individuals that have Effective Communication needs (prior to a disciplinary hearing being conducted) in cases where the hearing disposition may result in an increase in security level and/or placement in more restrictive housing.
- 2) During the meeting, staff must discuss the upcoming disciplinary hearing and ensure the individual is able to understand, participate, and communicate effectively for the scheduled hearing.
- 3) For future monitoring tours, the ACSO must provide completed Record of Contact Forms (or other relevant documentation) demonstrating proof of practice.

## **Intake & Orientation**

**1008. In consultation with the ADA Joint Expert, Defendants shall develop and implement healthcare screening questions in order to identify individuals with intellectual, developmental, psychiatric or learning disabilities. These healthcare screening questions shall be asked of all newly booked persons and conducted in a reasonably confidential setting. If the initial screening identifies a possible intellectual, developmental, psychiatric, or learning disability, the individual shall be referred to a Qualified Mental Health Professional, including a Licensed Clinical Psychologist where appropriate, for a secondary screening and assessment to occur within sixty (60) days of booking. In the context of learning disabilities, the referral may be made to an appropriately qualified community provider, such as 5 Keys, for screening using a screening tool such as the Test of Adult Basic Education to occur within fourteen (14) days of booking. The date of the assessment, the nature of the individual's disability, and any accommodations authorized for the incarcerated person shall be promptly documented in the ADA Tracking System.**

## **Finding: Partial Compliance**

### **Assessment:**

One of the policies states, "The Medical screening process during intake provides the ability to identify most disabilities and the need for accommodations prior to the housing of the inmate. It is the responsibility of ITR and Medical staff to assess inmates upon admission for evidence of a disability or special management need. This assessment information will be entered on the Pre-Booking Medical/Mental Health Screening Form and the Inmate Disability Evaluation Form." Section IV. A. (Forms) states, "Intake and Medical staff shall use the Inmate Disability Evaluation Form report to verify an inmate's disability. Medical staff will determine and document if a disability exists."

Another local policy states in part, "Receiving screening: prior to placement in the general population, a member of the medical staff shall screen each inmate. Findings of the screening shall be recorded on the contracted medical provider screening form, which is approved by the medical director." It also states, "Additionally, past and present medical or psychiatric treatment, hospitalization for behavioral disturbance or suicidal ideologies, and any other health problems as designed by the medical director shall be documented." "Inmates who have, or suspected of having, developmental disabilities shall be separated from the general population pending assessment, to prevent their being victimization by predators. The health authority or designee

shall contact the 'Regional Center of the East Bay' regarding any inmate suspected or confirmed to be developmentally disabled for diagnosis and/or treatment within 24 hours of such determination, excluding holidays and weekends." Section IV. further provides information relative to a 14-day Health Appraisal and contains information specific to Behavioral Health Services and evaluations.

Staff did not provide any completed copies of the Intake forms (or other applicable forms) for review for the monitoring period as related to Intake screening for incarcerated persons with possible psychiatric, intellectual/developmental, or learning disabilities. Likewise, staff did not provide any proof of practice documentation to confirm whether the Intake staff is referring incarcerated persons for follow-up or secondary screening and assessment (when appropriate) within 60 days of booking to a Qualified Mental Health Professional (including a trained and Licensed Clinical Psychologist). Also, as related to learning disabilities, staff did not provide any proof of practice documentation to confirm if the Intake staff is referring incarcerated persons to Five Keys education personnel (within 14 days of booking) for further screening, e.g., Test of Adult Basic Education.

While on-site, the ADA Joint Expert reviewed the eight (8) page Wellpath Receiving Screening Alameda County Questionnaire. The form contains a few general-related questions. Staff indicated that through the Intake question and answer process, as well as through observations, Intake staff could be prompted to "interview deeper" for more related information. An Intake staff member indicated she would then complete an ADA Assessment Form, which in turn is sent to a Classification Deputy and ADA Coordinator (triplicate form). She explained that related information is entered in and contained within ATIMS, CorEMR, and the Gateway systems. She cited that for behavioral health concerns, all incarcerated persons are referred to behavioral health; though not all referrals warrant an interview, all incarcerated persons referred are at least triaged. She also cited multidisciplinary meetings are conducted weekly to discuss patient behavioral health and medical needs.

While on-site, the ADA Joint Expert observed the Custody Intake Screening process. The process contained several mental health-related questions. There were no questions pertinent to possible intellectual/developmental or learning disabilities.

The ADA Joint Expert also observed the Medical Intake Screening process. There were numerous mental health-related questions asked. The Intake staff member also asked the individual being screened as to any special education history. Upon conclusion of the interview, the ADA Joint Expert asked the staff member a hypothetical question, specifically, if someone answered "yes" to the special education question, what would be the next step based on the response? The staff member was unable to answer the question.

While on-site, the ADA Joint Expert observed a staff member conduct the Behavioral Health Intake Screening process. The process included numerous behavioral health-related questions. There was one question asking whether there was any current or past connection to a Regional Center. The Clinician gave the individual a phone number for a Regional Center. After the Intake interview concluded, the ADA Joint Expert asked the staff member (hypothetically) when (or under what circumstances) a staff member would call a Regional Center to obtain information. However, the staff member did not appear to know the answer to the question.

In the review of the Intake/Receiving Screening Form (filled out at the ITR law enforcement parking lot), it contained general mental health-related questions.

The review of the Classification Screening Form found it contained general intellectual/developmental disability-related questions.

In review of the Five Keys (School and Programs) Continuing Student Demographics Form (questionnaire and checkboxes), the form included questions pertaining to IEP, 504 Plan, previous Resource class or other services received, education level, etc. The review of the Five Keys (School and Programs) Student Enrollment Form found it also included questions pertaining to past school and education information and special education-related questions.

The ADA Joint Expert understands that ACSO is working on the development of a real-time networked ADA Tracking System. The ACSO/AFBH/Five Keys personnel must have an avenue to accurately document the dates and types of assessments, the nature of an individual's disability, and any accommodations required or needed for the incarcerated person. To the extent feasible and until the new tracking system is implemented, appropriate staff must document the assessments, findings, and the incarcerated person's accommodation needs to show proof of practice. This documentation must be available for review by the ADA Joint Expert.

One of the BHI incarcerated person lists contained 11 pages of numerous names (no specific levels of designation were identified). The ADA Joint Expert understands that AFBH is actively working to categorize BHI incarcerated persons into at least four (4) separate levels of care. The second list (dated February 2022) contained only six (6) names.

While on-site, Compliance Unit staff provided a learning disability list consisting of one (1) incarcerated person. Staff informed the ADA Joint Expert that the names are taken from ATIMS. There was no reasonable accommodation-related information contained within the list.

The list of incarcerated persons (as provided through document production) with learning disabilities contained five (5) names (no date). Information for the five (5) individuals included:

- Unable to read and write
- Cognitive disability Golden Gate Regional Center (Autism)
- Cognitive disability Regional Center of the East Bay client – Traumatic Brain Injury
- Asperger's and ADHD (per the patient)
- Medical capacity of a young child

The January 2022 Armstrong v. Newsom list contained two (2) names. The information contained the following:

- One (1) individual arrived on January 5, 2022, and the other incarcerated person arrived on January 27, 2022
- The document did not list their last names
- Both individuals are apparently intellectually/developmentally disabled, and both have the exact same listed adaptive support needs (bathing, exchange of clothing)

Although confidentiality is discussed in greater detail in other sections of this report, the ADA Joint Expert will monitor to determine if healthcare screenings at both Intake and for follow-up/more extensive testing/evaluations (based on referrals) are conducted in a reasonably confidential setting.

## Recommendations:

- 1) For future monitoring tours, staff must provide completed copies of all Intake screening forms for the respective monitoring period disabilities identified as related to screening for psychiatric, intellectual/developmental, and learning disabilities.
  - a. All screening forms must appropriately identify the disability (or possible disability concerns) as well as the reasonable accommodations or adaptive support needs required for staff to provide to the individual.
- 2) For future monitoring tours, staff must provide completed copies of all referral forms for the respective monitoring period related to referrals for follow-up and/or more extensive or diagnostic testing/screening/evaluation for psychiatric, intellectual/developmental, and learning disabilities.
- 3) ACSO must work in collaboration with other contracted partners (e.g., AFBH/Five Keys, Wellpath) to provide completed copies of all follow-up and/or more extensive diagnostic testing/screening/evaluation for psychiatric, intellectual/developmental, and learning disabilities.
- 4) Regarding language outlined in one of the policies, "Inmates who have, or suspected of having, developmental disabilities shall be separated from the general population pending assessment, to prevent their being victimization by predators"; the ADA Joint Expert is requesting clarity on this issue. Staff must provide information as to where this decision is made, what unit(s) and what type of unit(s) possible intellectual/developmental-disabled incarcerated persons are temporarily housed in, and how much time elapses (on average) before confirmation of the disability and victimization concerns. What is the process if the individual is not a prior Regional Center client and there is no Regional Center information available?
- 5) The ACSO/AFBH screening forms must contain more appropriate questions to better identify whether the incarcerated person may have a possible intellectual/developmental or learning disability. Though comprehensive testing and evaluation will come after the referral, the Intake screening questionnaire must be revised to incorporate more meaningful questions to better ascertain possible intellectual/developmental and learning disabilities.
- 6) Secondary, follow-up or more diagnostic testing/evaluations must better identify whether an individual has an intellectual/developmental disability, and if so, what the specific adaptive support needs are, and what the recommended monitoring frequencies are for staff (e.g., housing unit staff, work supervisors).
- 7) ACSO must work in collaboration with other contracted partners (e.g., Wellpath) to ensure that staff who conduct Medical Intake Screening understand the Intake questions related to special education and what to do with that information when a screened individual acknowledges a prior special education history.
- 8) ACSO/AFBH must ensure that staff who conduct Behavioral Health Intake Screening understand the Intake question related to possible prior Regional Center services and what to do with that information when a screened individual acknowledges being a past Regional Center client.
- 9) ACSO/AFBH/Five Keys must ensure disability screenings and follow-up or more extensive testing/evaluations (for psychiatric, intellectual/developmental, and learning disabilities) are conducted in a reasonably confidential setting.

**1009. Individuals identified at intake as having a Psychiatric Disability shall be referred to the ADA Unit for follow-up as described in Section III(J)(1). Individuals not identified as having Psychiatric Disability at intake may request a post-intake assessment at any time after they are processed into the Jail. Staff may also refer individuals for a post-intake**

**assessment. Individuals shall also be referred for an assessment where there is documentation of a Psychiatric Disability in the individual's health record or prior correctional records or where a third party, such as an individual's community mental health provider or family member, where appropriate, makes a request for an assessment on the individual's behalf.**

**Finding: Partial Compliance**

**Assessment:**

One of the policies states, "The Medical screening process during intake provides the ability to identify most disabilities and the need for accommodations prior to the housing of the inmate. It is the responsibility of ITR and Medical staff to assess inmates upon admission for evidence of a disability or special management need. This assessment information will be entered on the Pre-Booking Medical/Mental Health Screening Form and the Inmate Disability Evaluation Form." Section V. B. (Intake Process for Disabled Inmates) states the following:

- Medical staff shall screen all inmates entering the facility for medical and mental health issues, notifying ITR staff of inmates meeting ADA criteria, including any special needs the inmate may have.

Policies reviewed do not contain information pertaining to referrals (e.g., healthcare staff, custody staff, third party, etc.) to the ADA Unit or regarding post Intake assessments. The ADA Joint Expert did not view any other policies that had related information.

Through staff interviews, referrals are reportedly conducted for psychiatric assessments. However, staff who were interviewed informed the Expert that not all referrals are documented (e.g., some are done via phone calls or word-of-mouth). A staff member stated that a copy of the Medical Assessment Form is routed to the ADA Coordinator (as well as to Classification staff), but it is unclear whether this same process takes place for referrals (whether from healthcare or from other parties).

The ACSO did not provide proof of practice documentation for review.

**Recommendations:**

- 1) The ACSO should incorporate language into the local policy that individuals identified at Intake as having a psychiatric disability shall be referred to the ADA Unit for follow-up. Language should reference referrals by healthcare staff, but also post-Intake referrals for those individuals not identified as having a psychiatric disability at Intake and any referrals for an assessment from other staff or third parties.
- 2) For future monitoring tours, the ACSO must provide proof of practice documentation showing the following:
  - a. Individuals identified at intake as having a psychiatric disability shall be referred to the ADA Unit for follow-up
  - b. Individuals not identified as having a psychiatric disability at Intake who requested a post-intake assessment at any time after they are processed into the Jail
  - c. Cases where staff referred individuals for a post-intake assessment
  - d. Cases where individuals were referred for an assessment where there was documentation of a psychiatric disability in the individual's health record or prior correctional records, or where a third party, such as an individual's community

mental health provider or family member, where appropriate, made a request for an assessment on the individual's behalf.

**1010. During intake, Defendants shall provide all incarcerated persons with a copy of the Jail handbook and any other orientation materials including instructions on how to request disability-related accommodations, how to contact the ADA Coordinator, and how to file a grievance regarding ADA-related issues. Upon request, ACSO staff shall provide Effective Communication and assist incarcerated persons with Psychiatric Disabilities in understanding the rulebook and orientation materials. Where an individual has been flagged as having a severe cognitive, developmental, or intellectual disability, regardless of whether assistance is requested, ADA Unit Staff shall assist the individual in understanding the rules of the Jail.**

**Finding: Partial Compliance**

**Assessment:**

One of the policies states in part that the Orientation video includes a description of the grievance procedure. The Section also states that the Orientation video will be shown in the ITR holding cell before an incarcerated person is placed in a housing unit and that it will be shown 24-hours a day in ITR and in housing units on channel 27. Further, the section states, "After the video is viewed, the ITR deputy/sheriff's technician will make legible entries on the 'Orientation Video Shown' line of the custody cards. The entry will include the date and time viewed, employee signature, and badge number." Lastly, the section states, "In addition to the inmate orientation video, inmates will receive the Inmate Rules and Information booklet, which has written information contained in the video on inmate programs, services, and activities. The booklets are available in Spanish, English, and Braille."

The ADA Joint Expert reviewed the Inmate Rules and Information (Orientation handbook) and observed a Spanish version as well. Information contained in the Orientation handbook that is required by the Consent Decree includes:

- Americans with Disabilities Act (ADA)
  - Incarcerated persons may not be refused participation in services, programs, or activities by reason of their disability unless such participation presents a direct threat to the health and/or safety of themselves or others.
  - If individuals have a disability, whether that disability is noted by medical staff, they may file a request for accommodation.
  - Requests for accommodations may be filed by filling out either a message request form, a grievance form, or a request for accommodation form.
  - Federal law prohibits passing along the costs of accommodations to disabled individuals.
  - If individuals have a grievance regarding an ADA issue, they may file a grievance which will be received by the ADA Coordinator.
    - Be sure to mark the "ADA Related" box in the upper right corner of the grievance form.
  - If individuals require assistance filling out a grievance form due to a disability, a deputy will assist.
  - If individuals have a request of any kind related to an ADA issue, they may file a Message Request (ML-76). Individuals are reminded to mark the "ADA Related" box in the upper right corner of the grievance form.

- Grievance Procedure
  - Obtain the Inmate Grievance form (ML51) from the deputy
  - Only one (1) complaint per grievance
  - Fill out the grievance form, then return a housing unit deputy or to the locked box located in the dining room.
  - The inmate will receive a copy of the grievance form with the date and time of the deputy receiving the grievance and a grievance tracking number if the deputy is unable to resolve the grievance.
  - Grievances are investigated by the Grievance Unit at the Santa Rita Jail
  - Complaints directed towards Commissary must be submitted on a Discrepancy Form (available in the housing unit) and are to be given to the housing unit deputy for processing
  - Online Grievance Procedure (e-Grievance procedure) available via Global Tel Link (GTL)
    - Not a replacement for the original grievance procedure, but it provides another opportunity to submit a grievance without the need to speak to a housing unit staff member
    - Once the online grievance form is completed, the inmate will send the grievance directly to the Grievance Unit for review
    - If it cannot be resolved at the staff level, it will be assigned a tracking number
  - The incarcerated person will receive an email response from the Grievance Unit regarding the appropriate action taken
  - No more than four (4) online grievances per month

The Inmate Rules and Information (Orientation handbook) contains information on how to request disability-related accommodations and how to file a grievance regarding ADA-related issues, but it does not contain information on how to contact the ADA Coordinator.

The ADA Joint Expert interviewed numerous staff members, including some who work the ITR Intake process. All staff interviewed indicated that the Inmate Rules and Information (Jail Orientation handbook) is provided to all new arrivals via hard copy and is available on the electronic tablet. Reportedly, incarcerated persons can also further request another hardcopy from an agency member and/or through the message request process.

The ADA Joint Expert interviewed ten (10) incarcerated persons. All were behavioral health patients, and approximately three (3) had possible intellectual/developmental disability or learning disability concerns. Of the ten (10) individuals interviewed, six (6) claimed they never received a hard copy of the Inmate Rules and Information (Jail Orientation handbook) during Intake or at any time afterward. All ten (10) indicated there was no verbal orientation provided to them, which is especially applicable for the three (3) individuals that have possible intellectual/developmental disability or learning disability concerns.

The ACSO did not provide any documented proof or completed examples of forms or documents showing that incarcerated persons are provided with a copy an Inmate Rules and Information (Jail Orientation handbook), or whether they refused to accept a hard copy of the information (e.g., as possibly noted via a checkbox or by other means through related documentation/forms). Likewise, there was no documentation provided relative to staff assisting and effectively communicating information pertaining to the contents of the Inmate Rules and Information (Jail Orientation handbook). Staff stated they provide assistance when asked. For future monitoring tours, the Joint ADA Expert will examine related documentation.

## **Recommendations:**

- 1) The ACSO must revise the Inmate Rules and Information (Jail Orientation handbook) to include information on how incarcerated persons can contact the ADA Coordinator. The information must also identify that the same information can be accessed via the electronic tablets.
- 2) The ACSO must ensure that all incarcerated persons are provided (or at least offered) a hard copy of the Inmate Rules and Information (Jail Orientation handbook) during the Intake process. Upon request, custody staff shall provide Effective Communication and assist incarcerated persons with psychiatric, intellectual/developmental, and learning disabilities in understanding the rulebook and orientation materials. It is recommended that proof of practice documentation is made for such encounters.
- 3) For individuals that have been identified as having a severe cognitive, intellectual/developmental, or learning disability, regardless of whether assistance is requested, ADA Unit Staff shall assist the individual in understanding the rules of the Jail. It is recommended that proof of practice documentation is made for such encounters.

## **Provision of Reasonable Modifications**

**1011. Defendants shall provide reasonable modifications and accommodations as necessary to ensure that qualified individuals with Psychiatric Disabilities have equal access to programs, services, and activities that are available to similarly situated individuals without disabilities. The process for submitting ADA-related requests for modifications and accommodations is contained in Section III(J)(9)(a). The specific type of modification required shall be based on an individualized assessment of the needs of the individual and the program, service, or activity at issue. In the context of vocational programs, the assessment shall also take into account the essential job functions and whether the individual can meet those functions with reasonable modifications.**

## **Finding: Partial Compliance**

### **Assessment:**

One of the policies defines Reasonable Accommodation as "An adjustment made in a system to 'accommodate' or make fair the same system for an individual based on proven need." One of the sections states in part, "The ADA Request for Accommodation Form may be used by an inmate to formally request accommodation for a disability." One of the sections states, "The ADA Coordinator will use the ADA Coordinator Review Form when an inmate accommodation has been denied, a grievance has been filed, an alternate accommodation is proposed, a safety or security issue exists related to the accommodation request, or there is a financial or administrative issue." Another section states, "The Record of Contact Form will be filed in the ADA Coordinator's inmate files. The form will be used to document interaction or discussions the ADA Coordinator has with the inmate, staff or visitors regarding accommodations and ADA issues."

ACSO did not provide any completed example copies of the ADA Coordinator Review Form for review.

ACSO did not provide any completed example copies of the Record of Contact Form (for related interviews with psychiatric, intellectual/developmental, and learning-disabled individuals).

One of the policy sections states in part, "Staff shall provide assistance to inmates who require assistance in understanding and completing the message request form. This is especially true if the inmate requires assistance in writing or if the inmate is mentally ill or developmentally disabled." The ACSO did not provide completed example copies of the Message Requests as related to incarcerated persons with psychiatric, intellectual/developmental, and learning disabilities and as maintained by the ADA Coordinator.

The ACSO provided approximately six (6) grievances for review for the months of December 2021 and January 2022. All six (6) pertained to requests for an increase or change in psychotropic medications and/or requests to see a psychiatrist. Three (3) of the six (6) did not contain written staff responses or dispositions.

One of the policy sections contains general reasonable accommodation and Effective Communication information.

ACSO did not provide any completed examples of the following related forms for review for the monitoring period (for incarcerated persons with psychiatric, intellectual/developmental, or learning disabilities) as related to requests for accommodations or modifications:

- ADA Request for Accommodation Form
- ADA Grievances with requests for ADA Accommodations or Modifications
- Message Requests for ADA Accommodations or Modifications
- ADA Coordinator Review Form
- Record of Contact Form

For future monitoring tours, the ADA Joint Expert will carefully monitor whether custody and non-custody staff are providing reasonable accommodations/modifications to incarcerated persons with psychiatric, intellectual/developmental, and learning disabilities to ensure equal access to all programs, services, and activities. The ADA Joint Expert will also monitor whether accommodations/modifications are based on individualized assessments pertaining to the needs of the individual and the program, service, and/or activity at issue.

The ADA Joint Expert interviewed two (2) custody staff members. Both staff members advised that nearly all incarcerated person work assignments currently do not have corresponding job descriptions or a listing of essential functions for the respective positions. The staff members did acknowledge that each job assignment will have listed essential functions in the future. For future monitoring tours, and once corresponding essential functions are identified for all job assignments, the ADA Joint Expert will also monitor whether, for jobs and vocational assignments, the reasonable accommodation/modification assessments take into account the essential job functions and whether the individual can meet those functions with or without reasonable modifications.

### **Recommendations:**

- 1) For future monitoring tours, the ACSO must provide completed copies of the following forms pertaining to incarcerated persons with psychiatric, intellectual/developmental, and learning disabilities:
  - a. The ADA Coordinator Review Form
    - i. Copies must be provided for occurrences where accommodations have been denied, a grievance has been filed, an alternate accommodation is

- proposed, a safety or security issue exists related to the accommodation request, or when there is a financial or administrative issue as related to the provision of an accommodation.
- b. The Record of Contact Form
    - i. For occurrences showing documented interaction or discussions the ADA Coordinator had with an individual, staff, or visitors regarding accommodations and ADA issues.
  - c. The Message Request Form (for ADA Accommodations or Modifications)
    - i. As pertaining to ADA issues and maintained by the ADA Coordinator
  - d. The ADA Request for Accommodation Form
  - e. ADA Grievances with requests for ADA Accommodations or Modifications.
- 2) Staff must provide reasonable accommodations/modifications to incarcerated persons with psychiatric, intellectual/developmental, and learning disabilities to ensure equal access to all programs, services, and activities.
- a. This includes but is not limited to healthcare services (medical, behavioral health, and dental), Intake, Classification, Orientation, disciplinary process, request for accommodation/modification process, academic and vocational education classes and processes, religious activities, reentry services, self-help groups/processes, and release process, etc.
- 3) Reasonable accommodations/modifications must be based on individualized assessments pertaining to the needs of the individual and the program, service, or activity at issue.
- 4) The ACSO must develop job descriptions inclusive of essential functions for each respective incarcerated person's job assignment. All job assignments, including vocational education programs/assignments, must consider the essential job functions for assessing reasonable accommodation/modification requests and whether the individual can meet those functions with reasonable modifications.

**1012. Examples of possible reasonable modifications/accommodations include, but are not limited to, providing Effective Communication, designated therapeutic and/or protective housing unit appropriate counseling/therapy (group and individual), reliable access to necessary medications, Qualified Mental Health Professional input prior to removing privileges and/or otherwise imposing discipline, and any modifications necessary to ensure equal access to programs.**

**Finding: Partial Compliance**

**Assessment:**

The ADA Joint Expert interviewed numerous custody and non-custody staff members from various areas/disciplines. As outlined in more detail elsewhere in this report, staff widely do not have a list of reasonable accommodation needs for psychiatric, intellectually/developmentally, and learning-disabled incarcerated persons. Such a list should be based on clinical assessments and evaluations. Staff acknowledge not having such lists but stated they primarily rely on their knowledge of the incarcerated persons and from specific accommodation requests made by the individuals. Staff stated that accommodations are provided through various means for this population, e.g., providing Effective Communication for healthcare encounters (medical, behavioral health, and dental), various due process-related events (e.g., parole/probation processes, Classification processes, Disciplinary processes, etc.), and various significant types of events, (e.g., religious services, reentry/transitional services, education assignments, work

assignments, etc.). Although staff claim to provide Effective Communication when they are aware of the incarcerated person's needs, they admit that it is not widely documented. The ACSO does not currently have an Effective Communication Policy, and there was no related documentation provided for the monitoring tour.

In addition to providing Effective Communication, staff indicated that reasonable accommodations are provided through various other means, e.g., proper housing based on numerous security factors; observing the individuals for possible safety and victimization concerns; participation in behavioral health groups and counseling; ensuring participation in self-help groups with directions; providing assistance as needed; prescribed medications; and ensuring participation in work and education assignments with assistance provided as needed. Several of these areas are addressed throughout this report.

Approximately ten (10) behavioral health patients were interviewed. Related information is contained in other sections of this report. Although there were differing accounts as to access to services and accommodations that are provided (or not provided), there were individuals that acknowledged assistance in many forms, e.g., assistance navigating the electronic tablet; both custody and non-custody staff effectively communicating with them for every day encounters but also for specific programs and services; and psychotropic medications being adjusted upon request as needed (there were several grievances/grievance responses that validated this issue).

Due to the lack of overall documentation (proof of practice provided), this rated area will certainly be examined closely for the next scheduled monitoring tour.

#### **Recommendations:**

- 1) The ACSO should incorporate stronger policy language to better capture reasonable accommodation requirements to include the various methods for staff to provide and document the provision of reasonable accommodation/modifications.
- 2) Staff must have access to a tracking list that outlines general reasonable accommodations needs (e.g., Effective Communication).
- 3) For future monitoring tours, the ACSO must provide proof of practice documentation to capture the accommodations/modifications that are provided by custody and non-custody staff through various means.

**1013. For individuals with learning-related disabilities, possible reasonable accommodations may include but are not limited to providing notetakers, providing extra time to allow the individual to understand instructions/forms and repeating and/or clarifying as needed, or explaining how to fill out written forms (ADA request for Accommodations, Grievance, and Appeal forms) and/or in using the electronic tablets including providing assistance if needed.**

#### **Finding: Partial Compliance**

#### **Assessment:**

One of the policies states in part, "Inmates meeting the criteria of Public Law (P.L.) Section 94-142 may apply for special education classes." The policy also briefly outlined eligibility criteria. However, the policy does not contain any language relative to specific types of related accommodations that may need to be provided for individuals with learning disabilities.

None of the policies provided for review contain any comprehensive Effective Communication information. The ADA Joint Expert understands that ACSO will be developing an Effective Communication Policy (or comprehensive Effective Communication-related language to incorporate into existing policy) within the next six (6) months.

As previously outlined in an earlier section of the report, the ACSO provided an electronic learning-disabled list described as containing names of five (5) learning disabled incarcerated persons and provided a separate list (to the ADA Joint Expert while onsite) listing one (1) individual as learning disabled. However, none of the names listed had identified specific reasonable accommodation needs. For one (1) of the individuals, it indicated the person was unable to read and write. For a second individual, it was inferred the individual could not read and write, as the list stated, "Mental Capacity of a child."

There was no documentation received regarding the specific testing for learning disabilities or other information identifying how incarcerated persons are placed on a learning-disabled list. Without a proper identification process and tracking system to identify learning disabilities, and more importantly, the specific accommodation needs required for understanding and equal access to programs, services, and activities, custody and non-custody staff will largely be unable to or have difficulty understanding what accommodations to provide to learning disabled individuals.

Staff who were interviewed indicated they provide reasonable accommodations to learning disabled individuals if they are aware of their accommodations needs or would provide such accommodations in the event they would be interacting with a learning-disabled person.

None of the incarcerated persons interviewed (including three [3] with possible learning-disabled concerns) expressed any specific issues in understanding staff or needing specific accommodations. One (1) individual admitted difficulty in reading and writing but could not identify specific circumstances in the past where he needed assistance.

#### **Recommendations:**

- 1) ACSO must incorporate an identification process for specific types of reasonable accommodations for individuals with learning disabilities. The accommodations must be based on individual testing or evaluations:
  - a. Note: Until the real-time networked tracking system is developed and implemented, the ACSO must track identified learning-disabled persons so that all appropriate custody and non-custody staff have access to the information and are aware of the learning-disabled population and their accommodation needs.
- 2) ACSO must have a process in place (including policy language) to ensure staff members provide assistance (as necessary) to incarcerated persons with learning disabilities (and intellectual/developmental disabilities). The policy (or other documentation) must address or explain the types of accommodations that learning disabled incarcerated persons may require or need.
- 3) ACSO (in conjunction with Five Keys as necessary) must incorporate a jail-wide learning-disabled list, inclusive of specific accommodations needs for those individuals on the list.

**1014. For individuals with cognitive, developmental, and/or intellectual disabilities, possible reasonable accommodations may include providing designated housing in a therapeutic unit appropriate to the individual's classification level, prompts for adaptive**

support needs (including but not limited to prompts to take showers, clean cells, attend appointments, etc.), ensuring Effective Communication, explaining how to fill out written forms (ADA request for Accommodations, Grievance and Appeal forms, forms to request medical or mental health services, and any other written forms the Jail implements for incarcerated persons use) and/or in using electronic tablets and providing assistance if needed, assistance with commissary (e.g., observing the individual post commissary purchase for possible victimization concerns), assistance with laundry exchange, and obtaining input from a Qualified Mental Health Professional prior to conducting disciplinary/misconduct hearings.

**Finding: Partial Compliance**

**Assessment:**

Currently, ACSO does not have a policy that contains any comprehensive information regarding incarcerated persons with intellectual/developmental disabilities, the testing/evaluation process, or the requirements for staff to provide adaptive support services to ensure equal access to programs, services, and activities for those individuals. The ACSO must have a comprehensive policy and practices in place relative to intellectually/developmentally disabled incarcerated persons, or the information can be incorporated into existing policies.

As previously identified in this report, there were only two (2) incarcerated persons listed on a tracking list (generated by CDCR's Division of Parole Operations (DAPO), which provided the list to ACSO) as having intellectual/developmental disabilities. The documentation provided by DAPO lists their specific adaptive deficits. The low number of incarcerated persons identified with intellectual/developmental disabilities poses a real concern with respect to the testing/evaluation/identification process. However, the ADA Joint Expert is confident that in working with ACSO and AFBH, the identification process will soon identify this population. Although the numbers of those identified appear to be low, the ADA Joint Expert was pleased to see that ACSO/AFBH appear to be inclusive of those who don't meet the age of onset criteria under the Lanterman Act but still recognize the need to monitor them for adaptive functioning concerns, etc. But again, staff must be aware of the identified adaptive support needs.

Although the list of additional names (other than the aforementioned DAPO list of intellectually/developmentally disabled individuals) provided as part of document production were identified as "learning disabled," a few listed names included those listed as "Cognitive Disability Golden Gate Regional Center," "Cognitive Disability RCEB client – Traumatic Brain Injury," "Asperger's & ADHD (per patient)," and "Mental Capacity of young child." The list did not indicate what their specific adaptive supports or accommodations needs are. After proper testing, evaluation, and identification, the tracking lists must inform housing unit officers and work supervisors as to the required or needed adaptive support services for the individuals (as identified by a qualified, trained clinician).

The policy must also identify monitoring requirements for staff (e.g., housing unit staff and work supervisors) as well as required or recommended frequencies with which staff must provide or ask individuals relative to coaching, assisting, monitoring, and prompting. Specific adaptive support services will be different for all individuals identified as intellectually/developmentally disabled.

Additional key intellectual/developmental disability information that must be addressed in local policies/procedures include:

- Staff responsibilities regarding safety/vulnerability/victimization issues, special concerns, and accommodations needs of this population:
  - This includes classification screening for predator/victimization concerns with other incarcerated persons within the housing unit, as well as other related responsibilities.
- Housing protocols for intellectually/developmentally disabled incarcerated persons (possible clustering/semi-clustering approach).
- Incarcerated person disciplinary process as related to intellectual/developmental disabilities:
  - Including responsibilities for deputies, sergeants, work supervisors, mental health staff, etc.;
  - Clinical consult process for incarcerated person disciplinary write-ups; and
  - Monitoring of patterns or numerous individual disciplinary write-ups:
    - Monitor possible placement in isolation or housing for intellectually/developmentally disabled incarcerated persons, possibly as a result of receiving write-ups and being found guilty but not being afforded procedural due process rights or their required adaptive support needs.
    - Multi-disciplinary committee or support team specific to periodically monitoring intellectually disabled incarcerated persons, their ongoing potential for victimization, and whether they can function safely; monitor programming; ensure incarcerated persons' accommodation needs are being met, and ensure that incarcerated persons are functioning at an acceptable level in the jail environment.
    - Monitoring may include but not be limited to safety/victimization/vulnerability, commissary, write-ups, personal hygiene (e.g., showering, brushing teeth, clean clothes), work, education, program activities, yard/dayroom, leisure activities, and ensuring that housing unit deputies and work supervisors are providing adaptive support accommodations.

Although ACSO provided a housing matrix as part of document production for the monitoring period, it is unclear as to where designated housing units are for intellectually/developmentally disabled incarcerated persons or whether this population can be housed in any housing unit commensurate to their security level and possible victimization/predatory concerns. It is unclear whether ACSO plans to use a clustering or semi-clustering housing approach in the future. Reportedly the Classification Unit works collaboratively with AFBH to identify appropriate housing. Along with all security and classification factors examined, this population normally does well in a semi-clustered environment, and more particularly, the individuals with moderate and severe adaptive support needs.

### **Recommendations:**

- 1) The ACSO/AFBH must employ policy and practices to ensure adequate testing and evaluation to identify the intellectually/developmentally disabled population and their specific adaptive deficits and adaptive support needs.
- 2) The intellectual screening/testing policy and process must be comprehensive, using recognized instruments, to allow psychiatrists, psychologists, licensed clinical social workers, or other trained clinicians to determine whether incarcerated persons are intellectually/developmentally disabled.
  - The intellectual screening/testing policy and process must include an examination for:

- Low cognitive functioning (usually IQ of 75 or below);
  - Concurrent deficits or impairments in adaptive functioning (the abilities necessary to care for oneself and to access programming and services in the jail setting)
  - The intellectual screening/testing policy and process must identify adaptive support needs or adaptive deficits that may be present in the following areas:
    - Health and safety
    - Socialization Skills
    - Academic Skills
    - Communication Skills
    - Leisure
    - Self-Advocacy/Use of Incarcerated Person Resources
    - Self-Care Skills
    - Self-Direction
    - Work
- 3) ACSO/AFBH should establish frequencies with which to ensure staff (e.g., housing unit staff, work supervisors) monitor and provide required/needed adaptive support services (e.g., coaching, assisting, monitoring, and prompting) as related to an individual's specific adaptive deficits (as identified by a qualified, trained clinician). Examples of types of adaptive support services to provide and/or monitor include, but are not limited to:
- a. Showering
  - b. Cleaning cell/dorm/living area
  - c. Attending appointments
  - d. Provide Effective Communication
  - e. Read/explain/scribe/fill-out forms (e.g., grievances, requests for accommodations, message requests, health care requests)
  - f. Instructions and help understanding and using electronic tablets
  - g. Help with Commissary processes (e.g., purchasing/receiving items, filling out slips, monitoring activity with purchases items, including for possible victimization)
  - h. Assistance with laundry exchange (e.g., filling out slips)
  - i. Understanding forms, processes, Orientation materials, etc.
  - j. Assistance in preparing for and/or understanding a disciplinary hearing.
- 4) The ACSO/AFBH should establish a logging system for staff to document accommodations provided, including adaptive support services.

## **Tracking**

**1015. Defendants shall implement an electronic, real-time networked tracking system including a grievance module (“ADA Tracking System”) to document and share internally information regarding an individual’s disability(ies) and disability-related accommodations within six (6) months of the Effective Date. The ADA Tracking System shall have the following functional capabilities:**

- (1) to store historical information regarding an individual’s accommodation needs in the event the individual is returned to custody multiple times;**
- (2) to list the current types of accommodations the individual requires; and**
- (3) to track all programs, services, and accommodations offered to incarcerated persons with Psychiatric Disabilities throughout their incarcerations, including any accommodations they refused.**

**Access to the ADA Tracking System shall be made available to and shall be used by ACSO staff at the Jail who need such information to ensure appropriate accommodations and**

adequate program access for people with Psychiatric Disabilities. At a minimum, Classification Staff, the ADA Coordinator, and their staff, the Facility Watch Commander, Division Commander, Administrative Sergeant, Program Managers, and AFBH and medical staff shall have access to the ADA Tracking System. Clinical and ADA Unit staff shall be responsible for adding or modifying information regarding the nature of an individual's Psychiatric Disability and necessary accommodations, including accommodations identified at intake and throughout the individual's incarceration. Clinical and ADA Unit staff may delegate the actual data entry piece to non-clinical or non-ADA Unit staff where appropriate. Prior to any due process events and clinical encounters, clinical and ADA Unit staff shall be required to view information in the system to determine if the individual has a disability and what accommodations are to be provided. All housing unit deputies, clinicians, and program managers who interact with incarcerated persons shall be trained to properly use the ADA Tracking System within six (6) months of the rollout of the ADA Tracking System.

**Finding: Implementation Not Yet Required – Rating N/A**

**Assessment:**

The ADA Joint Expert is aware that the ACSO will be developing and implementing an electronic, real-time networked tracking system, including a grievance module ("ADA Tracking System") to document and share internal information regarding an individual's disability(ies) and disability-related accommodations within six (6) months of the Effective Date.

**Recommendations:**

- 1) The ACSO shall develop and implement an electronic, real-time networked tracking system, including a grievance module ("ADA Tracking System") to document and share internal information regarding an individual's disability(ies) and disability-related accommodations within six (6) months of the effective date.

**1016. Housing unit, education, and program office staff shall be provided with a report listing all individuals with Psychiatric Disabilities in the relevant unit or program, as well as any needed accommodations. The information provided shall be limited to identifying the individuals who have a disability and what accommodations shall be provided. It shall not contain any information beyond the minimum required to ensure the individual's disability needs are accommodated. Until the electronic ADA Tracking System is fully implemented, this report shall be updated and provided to staff in written form at least once per week. Once the ADA Tracking System is fully implemented, the report shall be updated electronically, in a manner accessible to housing unit deputies daily.**

**Finding: Partial Compliance**

**Assessment:**

As part of document production for the monitoring tour, ACSO provided tracking lists for BHI, learning disabled, and intellectually/developmentally disabled incarcerated persons. The lists were incomplete and missing information in certain instances, including last names (in some cases), Effective Communication, and adaptive support needs. Between the lists received as part of document productions versus the lists observed onsite, some of the lists were not dated, so it was difficult to ascertain the accuracy of the list(s). As identified earlier in the report, there is

concern that intellectually/developmentally disabled individuals are not being identified or placed on a tracking list other than those self-identified, or through information obtained through a Regional Center, or via information obtained through CDCR DAPO (for former CDCR incarcerated persons). Based on staff interviews, there is confusion amongst staff as to who the psychiatric, intellectual/developmental, and learning-disabled individuals are as well as their accommodation needs. Some staff did not have lists, while some acknowledged they could access them electronically. The ADA Joint Expert notes that a new real-time networked electronic tracking system is being developed to address this concern.

### **Recommendations:**

- 1) ACSO must work with the Joint Expert Monitors regarding the development and progress of the new tracking system to allow for review, comments, and recommendations.
- 2) The new tracking system must be accessible to all appropriate departments/offices and staff that provide programs, services, and activities.
- 3) The new tracking system must include key information such as housing, disability, Effective Communication, and adaptive support services needs information as applicable.
- 4) Until the electronic ADA Tracking System is fully implemented, the tracking lists for BHI, learning disabled, and intellectually/developmentally disabled incarcerated persons must be updated and provided to staff in written form at least once per week with updates as changes are made (e.g., housing assignment changes, accommodation changes). Once the ADA Tracking System is fully implemented, the report shall be updated electronically, in a manner accessible to housing unit deputies and other key staff daily.

### **Housing Placements**

**1017. The fact that an individual has a Psychiatric Disability and/or requires reasonable accommodations for that disability shall not be a factor in determining the individual's security classification. Individuals with Psychiatric Disabilities shall be placed in housing that is consistent with their security classification and disability-related needs. Individuals with Psychiatric Disabilities shall be screened for potential victimization and vulnerability concerns, and those factors shall be considered when determining appropriate housing; however, their disabilities shall not be used to justify placing an individual in a more restrictive privilege level than that in which they would have otherwise been classified except as provided herein. Individuals with severe or profound cognitive, intellectual, or developmental disabilities shall not be housed in a more secure setting unless it is determined by the Classification Unit and mental health staff that there are no other viable alternatives to prevent the individual from being victimized. This decision shall be based on an individualized assessment of the person's needs and the specific safety and/or security concerns affecting the individual, including whether the person is able to function safely in a dormitory environment. To the extent possible, individuals housed in more secure settings due to victimization concerns shall receive the same privileges, access to programs, and out-of-cell hours that they would otherwise receive. The reason for housing an incarcerated person with a severe or profound cognitive, intellectual, or developmental disability in a more secure setting due to victimization concerns shall be clearly justified and documented in the ADA tracking system and classification documents and shall be reevaluated at least every sixty (60) days.**

**Finding: Partial Compliance**

**Assessment:**

One of the policies states the following:

- "Classification staff will classify disabled inmates with the inmate's disability given consideration when making a housing assignment, placing the inmate's safety at the forefront. Being disabled in any way is not justification for a higher security classification."
- "Every effort shall be made to house disabled inmates in general population unless such assignment would jeopardize the safety of the inmate or those around him/her."
- Booking staff will notify the ADA Coordinator and Classification staff when a disabled inmate is going to be housed in the facility via the Disability Tracking Form. Notifications to the ADA Coordinator shall be made within 24 hours."

The policy also states the following:

- It is incumbent upon all housing deputies to be aware of inmates assigned to their housing unit who have any type of disability.

There was not much to review in terms of documentation or observations while onsite to thoroughly rate this area. But in a review of the ACSO housing matrix as well as through staff interviews, an individual's psychiatric, intellectual/developmental, or learning disability alone, coupled with his/her associated accommodation needs or adaptive support needs, does not solely dictate security classification and housing assignments. But rather, housing placement is based on a myriad of other factors, including but not limited to various custody factors, assistance with daily living needs (e.g., if severe), violence, history, disciplinary history, commitment or charged offenses, and disability accommodation needs, etc. The ADA Joint Expert understands AFBH is in the midst of identifying various levels of care of behavioral health for psychiatric individuals, which will also correlate to housing and programming. The current housing matrix identifies numerous housing units for individuals with psychiatric disabilities. Those with learning disabilities appear to be designated to be housed in any unit commensurate to their security classification factors. As outlined earlier in this report, it is presently unclear as to which housing units are designated for intellectual/developmental incarcerated persons, but it appears these individuals may be housed in any unit as their security classification dictates. It is still unclear whether ACSO plans to use a clustering or semi-clustering approach for the intellectual/developmental population, especially those with moderate or severe adaptive deficits. Once ACSO/AFBH employs a comprehensive testing and evaluation process, it is likely that the number of those identified will increase and having at least two (2) or three (3) units for semi-clustering purposes would most likely prove beneficial for proper monitoring and safety of the individuals.

In observing the Intake process and through staff interviews, the Classification staff does ascertain victimization/vulnerability/predatory concerns during classification interviews and factor in that information when making housing decisions. After observing the Behavioral Health Intake screening process, there were obviously numerous questions geared toward behavioral health, but there were also a few questions relative to potential victimization concerns. Likewise, in observing the Medical Intake screening process, there were a few questions geared toward behavioral health and a couple of questions regarding possible victimization. The information is shared with the Classification Unit immediately and prior to housing and program assignment.

As outlined earlier in the report, the ADA Joint Expert has concerns that incarcerated persons with intellectual/developmental disabilities (as well as other psychiatric disabled individuals) are or may be placed in more restrictive housing environments at minimum until the disability and accommodation needs can be confirmed. Reportedly, this information is covered during the Restrictive Housing Committee Meeting process.

## **Recommendations:**

- 1) Recommend ACSO/AFBH consider at least a semi-clustering approach to housing intellectually/developmentally disabled incarcerated persons (at least those identified as moderately and severely intellectually/developmentally disabled). A semi-clustering approach allows for the intellectual/developmentally disabled population to reside with the non-intellectual/developmental disabled population (though still screened for predatory/victimization concerns), whereas there can be valuable learning of everyday living skills from the other individuals, but yet can allow for trained and carefully screened staff to work such units to better enable staff to effectively monitor and provide the necessary prompts and assistance as needed.
- 2) In the event there are no other feasible options other than to house an individual in a more restrictive housing environment due to victimization or other safety concerns, staff must justify the decision in writing (via the ADA Tracking System) and ensure the individual has equivalent access to programs, services, and activities (e.g., outside yard time, indoor pod/dayroom time, etc.) as he/she would have if they were housed in a different unit based on the security classification factors had the person not had a disability or associated accommodation needs:
  - a. The ACSO must evaluate such cases at least every 60 days.
- 3) ACSO will need to revise its housing matrix to coincide with the plan to categorize the four (4) different levels of behavioral health and to identify housing for intellectually/developmentally disabled individuals (if the recommended semi-clustering approach is adopted).

## **Access to Out-Of-Cell Time and Yard**

**1018. Defendants shall ensure that individuals with Psychiatric Disabilities are offered equal access to yard and day room exercise and recreation time as non-disabled individuals in comparable classification levels. Refusals of out-of-cell time and yard shall be documented consistent with Section III(D). Minimum out-of-cell time requirements apply to all incarcerated persons unless specifically contraindicated by a mental health treatment plan due to suicide precautions.**

## **Finding: Partial Compliance**

### **Assessment:**

One of the policies states, "Except when dictated by situations or events threatening the security and safety of the facility, staff and/or inmates, all inmates shall have access to recreational opportunities and equipment including one hour of daily physical exercise and/or leisure time outside their cell and outdoors when weather permits."

From the limited related documents received as part of document production, the ADA Joint Expert was unable to determine if there is a disparity in the equality between the outdoor yard time and activities as well as indoor dayroom/pod leisure time for incarcerated persons with psychiatric, intellectual/developmental and learning disabilities versus those that do not have such disabilities (from comparable security classification levels). This will be closely examined in future monitoring tours.

Regarding refusals for out-of-cell time and the documentation of such, through staff interviews, it was apparent that staff are inconsistent, at best. Most staff acknowledged that indoor dayroom/pod time refusals are not documented. As for outdoor or quasi-yard time, some of the custody staff stated that refusals are documented, but it was not universal. For future monitoring tours, the ADA Joint Expert will review out-of-cell logs as placed in the share file by ACSO staff. For staff that indicated that outdoor yard refusals are logged, when asked whether staff ask the individuals (i.e., psychiatric, intellectual/developmental, and learning disabled) as to their specific reason(s) for refusal, staff admitted that they do not generally ask. This is a concern as related to this population as there may be significant mental concerns, or victimization issues, etc.

The following represents related claims by incarcerated persons regarding out-of-cell time during onsite interviews. Note: the claims could not be substantiated or refuted and could not be compared against other individuals without disabilities or the same disabilities.

- Incarcerated Person #1
  - BHI Minimum
  - Rarely offered outdoor yard
  - Quasi-yard offered three (3) or four (4) days per week x one (1) hour each
  - Pod/dayroom offered twice daily x 2 hours each
  - Note: ADA Joint Expert noted Quasi-yard was open for yard while touring during the onsite tour (incarcerated persons were observed on the yard)
- Incarcerated Person #2
  - BHI-PC
  - Claims he is never offered outside yard or quasi-yard
  - Dayroom/pod offered two (2) days a week x 30 minutes each
  - Note: The quasi-yard was empty while touring the unit during the onsite tour
- Incarcerated Person #3
  - BHI-Mainline
  - Claims no "big yard."
  - Quasi-yard every day or every other day x 1 hour each
  - Dayroom/pod one (1) or two (2) times daily x 1 hour each
- Incarcerated Person #4
  - BHI-Mainline
  - Claims no "big yard."
  - Quasi-yard one (1) time per week x 1 hour each
  - Dayroom/pod one (1) or two (2) times daily x 1 hour each
- Incarcerated Person #5
  - BHI-PC
  - Claims no "big yard."
    - States she was only offered "big yard" twice. Believes the concerns are due to COVID-19 but refused both times due to some physical concerns with her body.
    - When asked whether staff asked her why she refused, she indicated that staff never asked her.
  - Dayroom/pod one (1) time daily x 1 hour each
- Incarcerated Person #6
  - Mainline Maximum
  - No big yard
  - Quasi-yard every three (3) days, but he does not attend
- Incarcerated Person #8
  - BHI PC

- No big yard
- Quasi-yard not offered
- Dayroom/pod two (2) times daily x one (1) hour each
- Incarcerated Person #9
  - BHI
  - No yard or pod information
- Incarcerated Person #10
  - Ad/Sep (BHI)
  - Quasi-yard two (2) times weekly (no time information)
  - Dayroom/pod “yes” (no other specific information)

Of the ten (10) incarcerated persons interviewed, none of them expressed any concerns with dayroom/pod time. There were some variances in the claims of dayroom time. This will be examined closely in future monitoring tours. There were also variations in the claimed quasi-yard time amongst the ten (10) individuals. This will also be examined closely moving forward. Most of the ten (10) individuals claimed they were either never offered "big yard" or rarely offered. This will also be examined more closely in the future, commensurate to their assigned security level and housing. One of the concerns is that staff are not regularly asking psychiatric or intellectually/developmentally disabled individuals as to why they are refusing to go to quasi-yard (or dayroom/pod). This was confirmed by both staff and incarcerated persons. It's inconsistent at best.

#### **Recommendations:**

- 1) The ACSO should utilize a standardized tracking system to track all outside yard, quasi-yard, and indoor dayroom/pod leisure time offered for psychiatric, intellectually/developmentally disabled incarcerated persons. Likewise, all refusals and the reasons for the refusals should be tracked (particularly if there appears to be a pattern).
- 2) For future monitoring tours, ACSO must provide examples of documentation for the monitoring period showing outside yard, quasi-yard, and indoor dayroom/pod leisure time offered, as well as information pertaining to refusals.
- 3) The ACSO must ensure there is no disparity between outdoor and indoor recreation time offered to psychiatric, intellectually/developmentally disabled incarcerated persons and other individuals in relation to the assigned security levels and housing units. Note: Minimum out-of-cell time requirements apply to all incarcerated persons unless specifically contraindicated by a mental health treatment plan due to suicide precautions.

#### **Access to Programs and Work Assignments**

**1019. Defendants shall ensure that individuals with Psychiatric Disabilities have equal access, as compared to non-disabled individuals, to all programs, activities, and services including, but not limited to, educational, vocational, work, recreational, visiting, medical, mental health, substance abuse, self-improvement, religious, electronic tablets, and reentry programs, including Sandy Turner Center and Transition Center programs, consistent with their classification and for which they are qualified. To the extent they do not currently exist, Defendants shall develop job descriptions and the essential job functions associated with each position. Defendants shall inform individuals with Psychiatric Disabilities, using Effective Communication, of the programs and worker assignments that are available to them, any job descriptions/essential job functions, how to contact the ADA Coordinator, that they have a right to request reasonable**

accommodations, and how to do so using the ADA Request form. To the extent a person is denied access to a program or worker assignment, they shall have the right to file an ADA-related grievance and/or otherwise appeal that decision. Programming staff shall access the ADA Tracking System to determine whether participants in a program have a disability and their accommodation needs. Until the ADA Tracking System is in place, the ADA Unit shall, on a weekly basis, provide program staff with a list of individuals with disabilities and their accommodation needs.

**Finding: Partial Compliance**

**Assessment:**

Local policy language includes the following:

- “All inmates with disabilities shall be offered access to all services, programs, and activities for which they meet eligibility criteria. These inmates shall not be excluded by reason of their disability unless they present a direct threat to the health and/or safety of others. This determination shall be made on an individualized basis. A list of all inmate services, programs, and activities is available to inmates.”
- “The ADA Coordinator will forward to the Inmate Services Lieutenant any requests by inmates who need accommodations to participate in services, programs, or activities.”
- “Inmate Services will consult with the ADA Coordinator in all cases where accommodations are granted or denied for disabled inmates. In any case, where an accommodation request is denied, the reason(s) for such denial will be put in writing and a copy given to the ADA Coordinator to be placed on the inmate's file.”
- “Inmates with disabilities who wish to participate in the inmate worker program, who, with reasonable accommodations, can perform the essential functions or duties of the work program, shall be allowed to participate.”

Note: all policies listed above contain applicable language.

Though many policies were reviewed (as outlined above), as well as numerous documents (some of which are outlined below), the ADA Joint Expert is unable to determine at this early stage of monitoring whether incarcerated persons with psychiatric, intellectual/developmental, and learning disabilities are receiving equal access to all programs, services, and activities as non-disabled individuals, or as compared to those that do not have the same psychiatric disabilities. Outlined below is some general information obtained from observations made during the onsite monitoring tour, onsite interviews of incarcerated persons, and document reviews.

**Five Keys (Schools and Programs) - Education**

During interviews with custody and non-custody personnel, they indicated that currently, there are no in-person classes taking place due to COVID concerns, but that the distance learning modality has increased. Reportedly students are provided education packets that they complete. Reportedly Five Keys has one (1) Principal, 12 teachers, and a Program Coordinator. One (1) of the teachers is said to be special education certified. One of the staff members interviewed indicated one of the teachers instructs Culinary Arts and Art Therapy (both via distance learning). Other classes offered she formerly taught include, Baking, Food Safety, Food Handling, Hospitality, and Health & Hygiene. Staff indicated that most students utilize the work/study packets and there is currently in-person contact with only a limited number of students. The teacher regularly uses "Get-Up" video visits (via the tablets) and that most teachers see their

students at least five (5) days a week now. One of the staff members cited the student hotline (# 42), which is accessible on their assigned electronic tablets. The staff member indicated there are several BHI incarcerated persons assigned to education classes. Staff stated that with distance learning, no students are exempt regardless of security level and housing. This will be examined more closely in the future. When asked about types of accommodations that are offered or provided to psychiatric, intellectual/developmental, and learning-disabled persons, examples staff cited included extra time, teachers repeat and explain, and speak softly. When asked, staff admitted that teachers do not have access to reasonable accommodation information for the students (as applicable). The staff member explained of dealings with intellectually/developmentally disabled students in the past and that teachers generally have knowledge of past and current IEPs. When teachers do not have accommodation information, they are able to contact former high school teachers, and have done that in the past. Staff stated that accommodations are provided as needed. Staff mentioned that the Principal is new to the position and recently implemented a reoccurring "Rounds" meeting, where the faculty discusses students that have challenges and how teachers can best meet the student's needs.

The ADA Joint Expert toured the Sandy Turner Education Center, where there was one (1) Sergeant and one (1) Deputy working the area. When asked about recruiting or getting the word out about education services, staff indicated there is information in the tablets, via word-of-mouth by staff, flyers/pamphlets posted in the housing units, and teachers and deputies make public address system announcements, seek out prospective students, and answer any questions. The staff mentioned the #42 hotline number (to Five Keys) and that the Classification Unit has final approval for "higher custody" prospective students, but all incarcerated persons have access to distance learning. They mentioned that Five Keys staff could build any class as needed, gearing toward the needs of the jail population. They also mentioned there is a separate vocational unit as well as career and technical education available.

The Five Keys Continuing Student Demographics Form contains a questionnaire and checkboxes for the student applicant, which includes questions pertaining to prior IEP, 504 Plan, Resource Class or other services, education level (whether completion of a high school diploma, GED, HiSet, or TASC, other high school equivalency, and last high school attended). The Five Keys Student Enrollment Form questionnaire and checkboxes information inquires as to past school information, prior special education services/classes, pull-outs for Resource Classes or Directed Studies, IEP, 504 Plan, level of education, and any prior college courses. There is also a Five Keys Request for Transcripts Form.

Five Keys has an Intake Questionnaire/check box form for the applicant to note classes of interest, i.e., Art Therapy, Roots of Success (Environmental Literacy Program), Substance Abuse, Culinary Arts, Parenting, Cosmetology, and Barbering (Theory Only), 7 Habits of Highly Effective People, Entrepreneurship (Must take 7 Habits and Financial Literacy as part of this course), Financial Literacy, Anger Management, and Intro to Construction. There is a Five Keys (Schools and Programs) Maximum MEN (behavioral health incarcerated persons) Programs questionnaire form. This form includes program description information for the following classes, whereas inmates can earn certificates: Art, Substance Abuse, Employment/Job Readiness Training, Baking/Serve Safe/Food Handlers Certification, Parenting Inside Out, Math for the Trades, Cosmetology, and Barbering, Hospitality, Anger Management, Entrepreneurship, Intro to Construction, 7 Habits of Highly Effective People, Financial Literacy, Mindfulness and Healing, Intro to Health and Hygiene, Roots of Success: Environmental Literacy and Job Readiness, English Second Language, and High School Diploma/High School Equivalency & Independent Study Programs.

Staff that was interviewed indicated they actively recruit, including touring housing units, leaving sign-up sheets, and posting flyers/pamphlets. One (1) of the flyers/pamphlets include the following:

- Flyer Five Keys (Schools and Programs) Opportunities/Programs
  - High School Completion (Diploma, GED, HiSET)
  - Transition to College and Financial Aid Supports
  - Career Training Education
  - English as a Second Language/ESL
  - Adult Basic Education
  - Academic Counseling

One (1) of the incarcerated persons interviewed stated that he previously requested to be considered for classes through Five Keys via the tablet, but it took approximately five (5) months to receive a response. Only at that point was he then told to fill out an enrollment plan. He states that it is a moot issue now that he was scheduled to be released just days after the interview with the ADA Joint Expert. The claim was not confirmed or refuted. Note: for the next monitoring tour, the ADA Joint Expert will examine the tracking mechanism to track all requests received and staff responses provided (including timeliness).

One (1) of the incarcerated persons interviewed stated that she is currently assigned to self-study courses and does not have any concerns.

Another incarcerated person interviewed indicated she is assigned to four (4) separate in-cell self-study classes (Parenting, Art Theory, Entrepreneurship, and Anger Management).

### Reentry Programs

Staff indicated that reentry services are presently up and running. While conducting the onsite expert monitoring tour, staff stated there are two (2) deputies and a Probation Officer III (through the county probation office) that oversee the program. Subsequent to the onsite tour, ACSO staff reported that the unit also has a lieutenant and a sergeant that oversee the re-entry programs. Reportedly some of the services overlap with Wellpath. Staff often work 1-on-1 with the individuals. The Transition Center offers coordination efforts for reentry and pre-release services based on AB 109. Some of the services and coordination assistance pertain to housing, drug treatment, college tuition, and family reunification. Staff explained that even in cases where the individual does not qualify under the AB 109 criteria, the individual can still receive services. Staff conduct 1-on-1 assessments and can now communicate via the electronic tablet as well. Some of the services mentioned included: Youth Family Services Review (through parole services), which includes a lot of clinical aspects; and Parenting class, which is part of the education provided. Currently, there is no AA/NA being offered through the program. Transition Center staff conveyed that they are physically in each housing unit every week, and they inform incarcerated persons as to the resources and services available. Staff explained that Laney and Chabot Colleges could (and do) offer free tuition and transfer to 4-year colleges/universities, to which they reportedly have had ten (10) graduates from UC Berkeley alone. There are also reportedly between 400-600 potential job placement possibilities. The staff showed the ADA Joint Expert Reentry Resource Directory with key information.

One (1) of the incarcerated persons interviewed stated he is not aware of reentry or transitional services, though he recently used the tablet for the first time for a medical concern.

One (1) of the incarcerated persons interviewed stated that she put in a message request for reentry and transitional services about three (3) days prior to the interview with the ADA Joint Expert but had not heard back yet. She did know about other services available.

Another incarcerated person interviewed acknowledged the tablet is helpful regarding information for reentry and transitional services and would like to see more free games available.

One (1) of the incarcerated persons interviewed indicated he had received information regarding transitional housing opportunities/services.

One (1) of the incarcerated persons interviewed indicated that he has never been made aware of reentry or transitional services.

### Electronic (Wireless) Tablet

The ADA Joint Expert interviewed a staff member regarding Inmate Services. Regarding the electronic tablets, he stated that the incarcerated persons can each receive a tablet and that it is assigned to them until they are released. While conducting the onsite monitoring tour, staff stated that for individuals under IOL status, tablets must be approved by the Commander. However, subsequent to the tour, ACSO staff indicated the determination is made by AFBH. Staff cited the following features for the tablets:

- Phone dial application
  - e.g., to call teachers, chaplains, family/friends
- Message Request system (for virtually all areas)
- Commissary orders
- Facility notices
- Inmate rulebook
- General Inmate Services and enrollment forms
- COVID video and information
- Voter registration and related information
- Relaxation application
- Independent Education application
- Pay services (e.g., movies, music, etc.)

The tablets also allow incarcerated persons to submit the following requests:

- Dental Sick Call
- Classification request
- Diet request
- Ear Plug Request
- 1381 Form Request (Booking)

One (1) of the incarcerated persons interviewed from stated he recently had a deputy help him understand and navigate the tablet but is not aware of any instructions (either hard copy or on the tablet).

One (1) of the incarcerated persons interviewed (possibly learning disabled, admitted IEP in high school and has reading/spelling concerns) though not on the learning-disabled list, stated that she is not aware of any instructions for the tablet (either on the tablet or via hard copy), but she said she could operate it sufficiently.

## Incarcerated Person Work Assignments

The ADA Joint Expert interviewed two (2) custody staff members involved with incarcerated person work assignments. The staff members acknowledged that very few work positions have corresponding written or listed essential functions. In fact, the staff admittedly are preparing to develop job descriptions.

The staff members indicated that most incarcerated person jobs are for the kitchen, laundry, special projects, capital projects, and the Sheriff's vocational area. The majority of workers are housed in three (3) separate housing units. Reportedly incarcerated persons have recently been going back to work (COVID concerns), and until about a month ago, Aramark staff did much of the work (e.g., food services). When eligible workers are assigned, they are rehoused to the appropriate unit. Both staff interviewed indicated there are no exclusionary criteria that would preclude a disabled individual from being hired into and working in any job assignment. When asked whether work supervisors provide reasonable accommodations (as needed) for the assigned workers, they both affirmed. However, both acknowledged there is no current tracking list that identifies the disabled individuals, or their reasonable accommodation needs for their disability. They mentioned they are attempting to get alarm clocks on the tablets to assist early morning workers. They stated there are two (2) deputies that actively recruit throughout the entire Jail for potential workers by posting flyers, going to all housing units, and responding to tablet and hard copy message requests. Custody staff conducts interviews after the individual fills-out job applications. For any individuals (including psychiatric, intellectually/developmentally, and learning-disabled persons) that cannot read and write (or have difficulties doing so), the staff reportedly work with the Program Services unit to simultaneously assign them to appropriate education classes.

The ACSO provided two (2) separate ACSO Work Crew Assignments Lists (six [6] pages each), dated February 3, 2022, and March 3, 2022, respectively. The lists included the following jobs:

- Approximately 270 incarcerated persons appeared on each list
- Jobs listed were:
  - Laundry
    - A Team Laundry
    - B Team Laundry
    - "Laundry Waiting" (assumed to be a waiting list for hire)
  - Kitchen
    - Minimum Males Kitchen
    - "Kitchen Waiting" (assumed to be a waiting list for hire)
    - Kitchen Extra
    - PC Males Kitchen
    - Female Kitchen Crew
    - AM Scullery
  - ITR
    - Day ITR Worker
    - Swing ITR Worker
    - Midnight ITR Worker
  - Housing Unit Pod Workers
  - "Medically Unfit" Status
    - 40 incarcerated persons
    - Unassigned Worker
      - 19 incarcerated persons

The ACSO also provided two (2) separate shortlists dated February 3, 2022, and March 3, 2022, of specific BHI incarcerated persons:

- February 3, 2022
  - Three (3) incarcerated persons
- March 3, 2022

It is unclear as to why the latter two (2) lists had so few BHI incarcerated persons listed. It is unclear if this was just a partial list of larger jail-wide worker lists or whether these are the only BHI assigned or eligible for job assignments. This will be examined closely during the next scheduled monitoring tour. Ultimately all disabled individuals must be considered for work assignments based on the essential functions of the job assignments and whether the individual can perform the essential functions of the assignments with or without reasonable accommodations. As for the recent monitoring tour, without a reconciliation against an accurate tracking list of psychiatric, intellectual/developmental, and learning-disabled incarcerated persons, it was not possible to easily identify all disabled persons with a job-assignments or on a waiting list. Again, those will be examined closely moving forward.

One (1) of the incarcerated persons interviewed stated that there are no opportunities available to him. This was not confirmed or refuted. He further stated he generally only finds out about prospective jobs by speaking with other incarcerated persons but did cite a flyer/pamphlet that was recently posted and that three (3) individuals from the unit that had been there the longest received the assignments.

One (1) of the incarcerated persons interviewed stated he had never received or heard of any information regarding work or education possibilities but that he would be interested.

One (1) of the incarcerated persons interviewed stated that she is not aware of any jobs or staff recruitment for jobs. She admitted she does not have any interest in working. She is not aware of any other female workers other than porters/pod workers.

One (1) of the incarcerated persons interviewed indicated that the staff does not recruit workers, but indicated he filled out a request for a kitchen worker position but was told to ask his deputy for an in-house porter/pod worker job as there were no openings in the kitchen.

### Religious Services

The ADA Joint Expert interviewed a non-custody staff member regarding religious services. He indicated there are multiple assigned chaplains for different faiths. He indicated there are some religious materials on the electronic tablets. The chaplaincy reportedly currently provides religious materials such as holy books, spiritual books, devotional materials, etc., and much of what they provide is courtesy of community donations. For non-tangible services, the chaplaincy provides services via three (3) modes, i.e., paper requests, a phone system with two (2) hotline numbers (#98 and #99), and electronic tablets. The staff reportedly tries to fill all requests on the same day as the request (or as they receive the requests). Due to COVID-19 concerns, there are no current face-to-face counseling or other encounters other than for death notifications. A note of concern here is that in interviewing one of the housing deputies, he pointed out that due to staffing shortages and workload, housing deputies are now sometimes asked to handle the face-to-face notifications. There are currently no in-person group services activities due to COVID concerns. It is unclear as to when this is expected to be lifted. There is a Minimum Chapel (minimum yard) for both males and females to use. Islamic services are normally conducted in the Transitional

Center. Some religious services are also normally conducted in the multi-purpose rooms within the housing units.

The ACSO provided some documentation for religious services and the Liberty Vision Ministries Chaplaincy, including a spreadsheet listing the Religious Materials Distributed Report for December 2021 and a spreadsheet regarding religious instruction, services, and counseling provided in December 2021. Such a list will be examined more closely in the future to ensure equitable services for psychiatric, intellectually/developmentally, and learning-disabled incarcerated persons. For Liberty Vision Ministries Chaplaincy, there is currently one (1) Oversight Chaplain, one (1) Protestant Chaplain, two (2) Catholic Chaplains, and one (1) Muslim Chaplain.

One (1) of the incarcerated persons interviewed stated he attempted to contact a chaplain via the tablet to request information regarding Jehovah's Witness's teachings but did not receive a reply until about four (4) months later with no substantive response. This claim was not confirmed or refuted.

One (1) of the incarcerated persons interviewed indicated she has been in contact with chaplaincy services, and they were quick to respond to her message request (two [2] days).

One (1) of the incarcerated persons interviewed acknowledged that chaplaincy services have effectively responded to his requests for Bibles and other information requests.

### Library Services

The ADA Joint Expert will visit the library during future monitoring tours. The ACSO provided a flyer/pamphlet for Alameda County Library Read & Write Better (for tutoring services), which instructs the reader to fill out a Message Request for jail tutoring services. Additional information provided includes the following Library Orientation information:

- Assistance provided by persons trained in the law
- ACSO contracts with Legal Research Associates, a law firm based in the Bay Area, to assist inmates with their legal research, with priority service to inmates in pro-per status
- To utilize this service, inmates must request and fill out the white legal form, which can be found in each housing unit.
- Legal requests will be processed through the Inmate Services Unit.

### Programs/Miscellaneous

The ACSO provided information for various miscellaneous services, including:

- Substance Abuse Programs
- Community Resources

### **Recommendations:**

- 1) The ACSO must develop job descriptions for all incarcerated person job assignments with listed essential job functions for each position. The ACSO must work with the ADA Joint Expert(s) (and Class Counsel) in the development to allow for review, comments, and recommendations:
  - a. For future monitoring tours, the ACSO must provide examples for all work areas for proof of practice and review.

- 2) The ACSO must have a process in place that allows for incarcerated persons with psychiatric, intellectual/developmental, and learning disabilities to receive reasonable accommodations for their disability while on the job:
  - a. The ACSO should provide proof of practice documentation (as applicable) for future monitoring tours.
- 3) Incarcerated persons with psychiatric, intellectual/developmental, and learning disabilities must be afforded equal access to (and for) all programs, services, and activities operated by ACSO staff or any other entity entered into a contract with the ACSO (e.g., Wellpath, Five Keys, etc.) as compared to non-disabled individuals, and consistent with an individual's security classification level and for which they are qualified.
- 4) The ACSO staff must inform psychiatric, intellectual/developmental, and learning-disabled incarcerated persons as to available job assignments and/or the possibility of being placed on a waitlist. In doing so, staff must inform the individuals as to how they can contact the ADA Coordinator (if needed), their right to request reasonable accommodations (e.g., via the ADA request for reasonable accommodation process), to apply and seek job assignments, and for reasonable accommodations while on the job site. Staff must also inform them as to the job descriptions and the corresponding essential functions for jobs. Effective Communication must be used during these encounters:
  - a. The ACSO should provide proof of practice documentation (as applicable) for future monitoring tours.
- 5) Until the ADA Tracking System is in place, the ADA Unit shall, on a weekly basis, provide program staff with a list of individuals with psychiatric, intellectual/developmental, and learning disabilities and their accommodation needs (e.g., Effective Communication, adaptive supports).
- 6) Five Keys teachers must have access to a current list (tracking list) of names of assigned psychiatric, intellectual/developmental, and learning-disabled incarcerated persons and their accommodation needs (as applicable). Note: such a list will only contain an incarcerated person's name, housing assignment, and specific reasonable accommodation and/or adaptive support needs information and will not contain any specific diagnosis information.
- 7) Five Keys teachers must provide reasonable accommodations as required or needed. It is recommended that teachers log such accommodations provided.
- 8) Recommend Five Keys staff maintain meeting minutes or logs (as pertaining to intellectually/developmentally and learning-disabled individuals) from the newly implemented "Rounds" meetings. ASCO should provide documentation showing proof of practice for future monitoring tours.
- 9) Recommend Five Keys staff maintain logs/documentation for any pull-out sessions where accommodations were provided or discussed for intellectually/developmentally and learning-disabled individuals.
- 10) Recommend Five Keys staff maintain dialogue with ACSO/AFBH as applicable to ensure referrals (as necessary) are done and any testing for individuals who may not currently be identified as having a disability or accommodation needs but are deemed by education staff as possibly having a psychiatric, intellectual/developmental, or learning disability.
- 11) For future monitoring tours, recommend producing updated lists as to programs/classes up and running in-person, programs done through distance methods, and those programs/classes that are closed (whether permanently or temporarily), and any anticipated dates for any changes.
- 12) For future monitoring tours, the ACSO must provide accurate lists of all filled worker positions and those filled by psychiatric, intellectually/developmentally, and learning-disabled incarcerated persons, as well as those that are on job waitlists.

- 13) For future monitoring tours, the ACSO should provide updated lists that clearly show which specific housing units and pods have access to which specific classes, programs, services, and areas (e.g., Transitional Center, chapel, etc.).

### **ADA Grievances and Requests**

**1020. Defendants shall provide and maintain a readily available mechanism for individuals to make a request for reasonable modifications independent of the grievance system ("ADA Request"). This ADA Request form must be available in hardcopy as well as on electronic tablets to the extent electronic tablets are provided to individuals for use. All ADA Requests shall be routed to the ADA Coordinator, or a member of their team, for review. The ADA Coordinator or a member of the ADA Unit shall review all ADA Requests within seven (7) days to evaluate them for any emergent issues that require an expedited response. Where an emergent issue is identified, the ADA unit shall respond within 48 hours of review and facilitate, as needed, obtaining any information required from AFBH to provide a response and/or scheduling an emergency appointment with AFBH staff as needed. For non-emergent issues, the ADA Unit shall provide a response within thirty (30) days of receipt of such a request. All ADA Requests and responses shall be documented in the ADA tracking system. Defendants shall inform individuals with Psychiatric Disabilities of the process for submitting ADA Requests in a manner that is effectively communicated. Where an individual is unable to submit written or electronic requests, the individual may make a request orally, and the Multi-Service deputy, housing unit staff, and/or the ADA Unit shall assist the individual in submitting the request in writing.**

### **Finding: Non-Compliance**

#### **Assessment:**

One of the policies states in part, "Inmates with disabilities shall use Message Request forms as other inmates. These requests shall be routed as any other message request as outlined in DC P&P 17.05, 'Inmate Message Requests.' Requests pertaining to ADA issues shall have the 'DISABILITY RELATED' check box marked. If the request can be directly addressed in the housing unit, it shall be noted on the form, and the message request shall be forwarded to the ADA Coordinator. If the request cannot be resolved in the housing unit, it shall be noted on the form, and the message request shall be forwarded directly and without delay to the ADA Coordinator. The ADA Coordinator shall address the issue and maintain a record of the request in the inmate's ADA file. Staff shall provide assistance to inmates who require assistance in understanding and completing the message request form. This is especially true if the inmate requires assistance in writing or if the inmate is mentally ill or developmentally disabled."

The ACSO did not provide any blank copies or completed copies of an ADA Request for Accommodation Form, nor was any data provided regarding any ADA Requests (or message requests regarding ADA concerns/issues) as part of document production for the monitoring tour. It does not appear that there is a stand-alone ADA Request for Accommodation Form or process independent of the grievance or message request processes.

The staff that was interviewed stated that incarcerated persons handle ADA requests through the message request process. Some of the incarcerated persons interviewed acknowledged that they deal with ADA requests through the message request process, while others were unclear as to what they would do if they had a specific ADA request for an accommodation.

## **Recommendations:**

- 1) The ACSO must develop a related policy for the ADA Request for Accommodation/Modification process or incorporate related requirement language within the existing policy.
- 2) The ACSO must develop and implement an ADA Request for Accommodation Form independent of the grievance or message request forms and processes.
- 3) The ACSO must ensure that ADA Request forms are available in hardcopy as well as on electronic tablets.
- 4) All ADA Requests must be routed to the ADA Coordinator, or a member of the ADA Unit, for review.
- 5) The ADA Coordinator or a member of the ADA Unit must review all ADA Requests within seven (7) days to evaluate them for any emergent issues that require an expedited response.
- 6) Where an emergent issue is identified, the ADA unit must respond within 48 hours of review and facilitate, as needed, obtaining any information required from AFBH to provide a response and/or scheduling an emergency appointment with AFBH staff as needed.
- 7) For non-emergent issues, the ADA Unit must provide a response within thirty (30) days of receipt of such a request.
- 8) All ADA Requests and responses must be documented in the ADA tracking system.
- 9) For future monitoring tours, ACSO must provide all ADA Requests (including ADA Coordinator or staff responses) for psychiatric, intellectual/developmental, and learning-disabled incarcerated persons for the respective monitoring tour period.
- 10) In cases where an incarcerated person is unable to submit written or electronic requests and makes an oral request for assistance, the Multi-Service deputy, housing unit staff, and/or the ADA Unit must provide assistance to the individual in submitting the request in writing.

**1021. Defendants shall provide and maintain a grievance system that provides for prompt and equitable resolution of complaints by individuals with Psychiatric Disabilities who allege disability-related violations. Defendants' grievance form shall continue to include a checkbox or similar means to identify that the grievance is ADA-related. Defendants shall train grievance staff to route "ADA" grievances appropriately even if the individual who filed the grievance did not check the "ADA" checkbox. Once implemented, the ADA Tracking System shall route grievances relating to class members who are Behavioral Health Clients to AFBH for their review in case there are underlying mental health issues that are driving the grievances. ADA staff shall consult with AFBH prior to imposing any grievance-related restrictions on class members who are Behavioral Health Clients. Until the ADA Tracking System is implemented the ADA Unit shall review and route grievances filed by individuals with SMI electronically to AFBH for review. AFBH shall assist as necessary in resolving issues raised by class members in grievances, including meeting with the grievant as needed.**

**Finding: Partial Compliance**

### **Assessment:**

One of the policies states in part, "Inmates will use the Inmate Grievance Form to submit grievances regarding ADA issues in which they believe they are being denied, as well as for all

other grievable issues as outlined in DC P&P 16.03, 'Inmate Grievance Procedure.' Staff shall provide assistance to inmates who require assistance in understanding and completing the grievance process. This is especially true if the inmate requires assistance in writing or if the inmate is mentally ill or developmentally disabled. All ADA grievances shall be handled in accordance with DC P&P 16.03, 'Inmate Grievance Procedure.' Deputies receiving the Grievance regarding an ADA issue shall ensure the 'DISABILITY RELATED' check box is properly marked in the upper right corner, denoting the grievance is ADA-related. Upon receiving an ADA grievance, grievance Unit staff shall review and log the grievance as outlined in D&C P&P 16.03. A copy of the grievance shall be immediately forwarded to the ADA Coordinator. Upon final disposition of the grievance, a copy shall be forwarded and filed by the ADA Coordinator."

The ACSO provided example grievances for review for the monitoring period. All grievances were written and/or responded to (by staff) in either December 2021 or January 2022. Specifically, there were six (6) grievances submitted by four (4) separate SMI Clients for the month of December and one (1) grievance for the month of January. For December 2021, only one (1) of the six (6) had an attached staff response, which appeared to accurately address the issue. All six (6) grievances pertained to requests for a change and/or increase in psychotropic medications. The lone grievance for January 2022 was also a request to change psychotropic medications, to which there was a staff response that appeared to accurately address the issue. Of the two (2) responses, both were addressed within appropriate timelines.

The ACSO provided the following blank forms (no completed copies provided):

- Alameda County Sheriff's Office Inmate Grievance Form (ML51) (Rev 3/19)
  - Hard copy and electronic tablet versions are available
- Inmate Grievance Response form (ML52) (Rev 2/2022)
  - If the grievance is denied, give the reason for denial
  - Do you wish to appeal this ruling (Yes or No checkboxes)
- Inmate Grievance Response Supplemental Information form (ML53) (Rev 10/14)
  - For incarcerated persons to use as additional pages for their grievances if necessary
- Alameda County Sheriff's Office Notice of Extension for Grievance form (Spanish version) (ML54) (Rev 3/15/21)
  - Indicates due to special circumstances, more than the standard forty-five (45) day response time will be needed to complete the inquiry.

A concern that will have to be examined is to better understand how "ADA" coded/categorized grievances are tracked (and ultimately provided as part of monitoring tour document production). The grievant is supposed to mark the "ADA" box in the upper right corner of the grievance form. The ADA Joint Expert will need to better understand specifically how the determination is made that a grievance is ADA-related. If the ADA box is not checked, do grievance office staff look for the acronym "ADA" or other key buzz words in the body of the grievance? Or do grievance office staff review the entire grievance and make the decision on whether it is ADA related based on what the grievant is claiming, grieving, etc. Another concern is when a grievant is not currently an identified psychiatric, intellectually/developmentally, or learning-disabled incarcerated person, but the issue is ADA-related. How will such grievances be coded/categorized? All ADA-related grievances must be coded/categorized as "ADA" even if submitted by an incarcerated person that has not been verified as being disabled, but perhaps they are claiming such, and the grievance is clearly an ADA-related issue. Additionally, ASO must train grievance staff to route "ADA" grievances appropriately, even if the individual who filed the grievance did not check the "ADA" checkbox.

The ACSO provided a memorandum dated January 25, 2022, titled "Monthly Grievance Report for the Santa Rita Jail for December 2021 (with attached Grievance Chart for the month of December). The ADA Joint Expert notes that there were no ADA-related grievances submitted for the month of December.

**Recommendations:**

- 1) For future monitoring tours, ACSO must provide clarity as to how exactly grievances are coded/categorized as "ADA" and routed.
- 2) For future monitoring tours, ACSO must provide all grievances (including staff responses) for psychiatric, intellectual/developmental, and learning-disabled incarcerated persons for the respective monitoring tour period.
- 3) The ADA staff must consult with AFBH prior to imposing any grievance-related restrictions on class members who are Behavioral Health Clients.
- 4) Until the ADA Tracking System is implemented, the ADA Unit must review and route grievances filed by individuals with SMI electronically to AFBH for review.
- 5) The AFBH must assist as necessary in resolving issues raised by class members in grievances, including meeting with the grievant as needed.
- 6) Recommend revising the Inmate Grievance Policy/Procedure to include the Consent Decree requirements.

**1022. The ADA Coordinator or a member of the ADA unit shall:**

- (i) review all ADA related complaints;
- (ii) assign an ADA-trained staff person to investigate the complaints and/or interview the individual to the extent his or her complaint or requested reasonable modification is unclear or consult with AFBH as appropriate; and
- (iii) provide a substantive written response.

**The ADA Coordinator or a member of the ADA Unit shall review all ADA-related grievances within seven (7) days to evaluate them for any emergent issues that require an expedited response. Where an emergent issue is identified, the ADA unit shall respond within forty-eight (48) hours of review and facilitate, as needed, obtaining any information required from AFBH to provide a response and/or scheduling an emergency appointment with AFBH staff as needed. For non-emergent issues, the total response time for all ADA-related grievances shall be thirty (30) days from receipt. All ADA-related grievances and responses, including provision of interim reasonable modifications, shall be documented and tracked in the ADA Tracking System Grievance Module.**

**Finding: Partial Compliance**

**Assessment:**

One of the Policies states in part, "Inmates will use the Inmate Grievance Form to submit grievances regarding ADA issues in which they believe they are being denied, as well as for all other grievable issues as outlined in DC P&P, 'Inmate Grievance Procedure.' Staff shall provide assistance to inmates who require assistance in understanding and completing the grievance process. This is especially true if the inmate requires assistance in writing or if the inmate is mentally ill or developmentally disabled. All ADA grievances shall be handled in accordance with DC P&P, 'Inmate Grievance Procedure.' Deputies receiving the Grievance regarding an ADA

issue shall ensure the 'DISABILITY RELATED' check box is properly marked in the upper right corner, denoting the grievance is ADA-related. Upon receiving an ADA grievance, grievance Unit staff shall review and log the grievance as outlined in D&C P&P. A copy of the grievance shall be immediately forwarded to the ADA Coordinator. Upon final disposition of the grievance, a copy shall be forwarded and filed by the ADA Coordinator."

The policy also states in part, "Inmates with disabilities shall use Message Request forms as other inmates. These requests shall be routed as any other message request as outlined in DC P&P, 'Inmate Message Requests' pertaining to ADA issues shall have the DISABILITY RELATED check box marked. If the request can be directly addressed in the housing unit, it shall be noted on the form, and the message request shall be forwarded to the ADA Coordinator. If the request cannot be resolved in the housing unit, it shall be noted on the form, and the message request shall be forwarded directly and without delay to the ADA Coordinator. The ADA Coordinator shall address the issue and maintain a record of the request in the inmate's ADA file. Staff shall provide assistance to inmates who require assistance in understanding and completing the message request form. This is especially true if the inmate requires assistance in writing or if the inmate is mentally ill or developmentally disabled."

In interviewing the ADA Coordinator and other ACSO staff, some ACSO staff claim the ADA Coordinator or other ACSO staff at least monitor the ADA issues and requests, whether the concerns are submitted via the grievance or message request processes. However, there was no documented proof of practice submitted as part of document production. There currently is not a stand-alone ADA Request for Accommodation/Modification process separate from the grievance or message request processes.

#### **Recommendations:**

- 1) The ACSO shall develop a policy to address the pending ADA Request for Reasonable Accommodation/Modification (and complaint) process:
  - a. The ACSO must work with the ADA Joint Expert in developing the policy and allow for review, comments, and recommendations.
- 2) The ADA Coordinator must review all ADA Requests for Reasonable Accommodation/Modification (and complaints) pertaining to psychiatric, intellectual/developmental, and learning-disabled incarcerated persons.
- 3) The ADA Coordinator must assign an ADA-trained staff person to investigate the complaints and/or interview the individual to the extent his or her Request for Reasonable Accommodation/Modification (or complaint) is unclear or consult with AFBH as appropriate.
- 4) The ADA Coordinator must provide a substantive written response:
  - a. The ACSO must provide all ADA Requests for Reasonable Accommodation/Modification (and complaints) as part of the document review for future monitoring tours.
- 5) The ADA Coordinator or a member of the ADA Unit must review all ADA-related Request for Reasonable Accommodation/Modification (or complaints) within seven (7) days to evaluate them for any emergent issues that require an expedited response.
- 6) Where an emergent issue is identified, the ADA unit shall respond within forty-eight (48) hours of review and facilitate, as needed, obtaining any information required from AFBH to provide a response and/or scheduling an emergency appointment with AFBH staff as needed.
- 7) For non-emergent issues, the total response time for all ADA-related grievances shall be thirty (30) days from receipt.

- 8) All ADA-related grievances and responses, including provision of interim Reasonable Accommodation/Modifications, shall be documented and tracked in the ADA Tracking System Grievance Module.

## Signature

Submitted on behalf of Sabot Technologies, Inc. dba Sabot Consulting to the County of Alameda, and Alameda County Sheriff's Office



July 8, 2022

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Date