



## Advancing the human and civil rights of people with disabilities

SELF-ADVOCACY ASSISTANCE ★ LEGAL SERVICES ★ DISABILITY RIGHTS EDUCATION ★ PUBLIC POLICY ADVOCACY ★ ABUSE INVESTIGATIONS

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Dear Counsel and Monitor Hickey:

We write on behalf of the Coalition to comment on the Chicago Police Department (CPD) Special Order S02-01-01 (People with Disabilities). The CPD policy on interacting with people with disabilities must be overhauled to ensure that officers understand their obligations and the rights of people with disabilities under federal law.

### **CPD Has Failed to Incorporate Years of Community Demands and Input**

The CPD's posting of this version of the policy without revision demonstrates a failure to take these important issues seriously. From 2019-2021, disability community members and organizations gave input to the CPD through listening sessions, focus groups, and a working group. The CPD's public engagement with directly impacted communities over the last four years should have resulted in significant policy development by the CPD. Instead, the posted policy remains deficient, having incorporated *none* of the community input provided throughout a multi-year process that required significant time and energy from community members.

Revisions should have already been made to this important policy for the daily interactions that CPD officers have with the hundreds of thousands of people with disabilities in Chicago. It is unclear why CPD has taken no steps to revise this policy, which is central to the Consent Decree, over the past four years.

*THE INDEPENDENT, FEDERALLY MANDATED PROTECTION & ADVOCACY SYSTEM FOR THE STATE OF ILLINOIS*

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### **The Policy Fails to Set Forth Basic ADA Requirements**

The policy must set forth the requirements of the Americans with Disabilities Act (ADA) and other disability rights laws relevant to all types of police interactions—whether responding to a call for assistance, conducting a street stop, or investigating a crime. In all these situations and more, police are interacting with people with disabilities, including as crime victims, suspects, witnesses, and community members. Indeed, the CPD’s policies on everything from use of force to police foot pursuits refer officers to this policy for guidance. Yet this draft provides CPD officers with no meaningful guidance on how to interact with people with disabilities in those circumstances. Nor does it provide any meaningful guidance on the overwhelming majority of other types of interactions, including many for which federal law requires police to make “reasonable modifications” to their procedures in order to accommodate individuals’ disability-related needs.

Although the policy provides general guidance on a selected few potential interactions between CPD personnel and people with disabilities, the policy falls short of informing officers of how the law applies to the performance of their duties. It is a far cry from the transformative policy that could and should have resulted after implementing the copious feedback provided by directly impacted individuals during the CPD’s public engagement meetings more than three years ago.

The policy must include instructions on how the ADA applies to all police interactions and the need to make “reasonable modifications” to their usual procedures. The guidance must be specific as to the legal obligations that apply in the wide range of situations in which officers interact with individuals with disabilities, and not be narrowly focused on a few types of disabilities or situations. More detailed guidance should also be provided to give specific instruction on particular scenarios that officers will regularly encounter, but not without the broader framework of disability rights laws.

### **The Policy Omits Important Guidance on Specific Disabilities and Accommodations**

The posted draft gives specifications regarding *some* types of specific disabilities but should also include guidance on interacting with people with the following disabilities: blind and low vision, traumatic brain injury, mental disabilities (including developmental and mental illness), as well as guidance on interacting with people with non-visible disabilities more broadly, and the range of disabilities that may impact how individuals respond to and interact with officers, such as those that impact speech, movement, and cognitive processing.

Some particular problems with the current content of the posted policy are set forth below:

Section II, on General Information, provides resource information that might be helpful, but it should be at the end of the policy as additional resources, not the focus of the policy.

While the resource information provided in this section might be helpful, that information should be a supplement to officers or CPD personnel. The resource information should be presented in a way that indicates the CPD’s commitment to work in conjunction with and seek out those resources to support and improve CPD’s interaction with people with disabilities.

Instead, as explained above, the policy should start with a comprehensive explanation of how Title II of the ADA applies to law enforcement, including explaining how federal law requires officers to make “reasonable modifications” to policies and procedures when needed by a person with a disability to receive appropriate and safe police services. This section should also include the definition of disability. In particular, the policy should make clear that officers are legally required to accommodate the needs of a person with a disability even if the officer does not know the exact nature of the disability or the particular diagnosis.

Section III. The current section addressing Department Procedures in Accommodating People with Disabilities is incomplete.

A. Accommodating people with mobility impairments

- This section provides a good starting point on providing guidance for officers or CPD personnel on assisting individuals that need the assistance of ambulatory devices. However, the section is specifically focused only on individuals who use a wheelchair. This section should be expanded to include, at a minimum, guidance to officers or CPD personnel interacting with people with mobility disabilities who do not use or have a wheelchair, including those who use canes, walkers, and crutches. Guidance should be broad enough to cover responsibilities relating to all types of medical equipment and assistive devices that people with disabilities might need, and not only one type.

B. Deaf and Hard of Hearing

- Under this section, the CPD should further clarify that restraint procedures must be modified to allow the individual to communicate to the furthest extent possible without jeopardizing the safety of the CPD members, the arrestee or others. This policy should specifically state that under the ADA, an officer often must modify the regular practice of handcuffing arrestees behind their backs and instead handcuff deaf individuals in front in order for the person to be able to communicate by sign or writing notes.
- This section should state that the ADA requires that the expressed choice of the individual with the disability, who is in the best position to know her or his needs, should be given primary consideration in determining which communication aid to provide.
- This section must specifically state that CPD personnel should not rely on minor children for interpretation assistance, except in an emergency involving an imminent threat.
- This section should explain that American Sign Language is not the only language that is used to communicate by individuals who are deaf or hard of hearing, and that not everyone who does use ASL or is deaf can also read and write, or lipread. While the rules on ASL interpreters are an essential part of this policy, the guidance needs to be broadened to include effective communication with deaf and hard of hearing individuals who do not use ASL and/or when an ASL interpreter is not available for those who do.

- Additionally, the first sentence in this section should be reworded or clarified, which currently states that deaf and hard of hearing individuals communicate with hand gestures and by writing. The policy should be clear that these are just two forms of communication and individuals may have other methods of communication.
- C. **Service Animals:** This section needs to be revised to convey the rights of individuals to have their service animals with them under the law. The policy presents what should be exceptional circumstances, those allowing removal of a service animal, as the norm. The policy should make clear that people with disabilities do not have to prove or show documentation that their animal is a credentialed service animal; instead, officers should rely on the word of the individual unless limited exceptional circumstances exist.
- The statement that emotional support, therapy, comfort, or companion animals are not considered service animals under the ADA is incorrect because it is too broad. The section suggests that service animals do not include those needed for mental health reasons. But, for example, under the ADA, service animals can also include dogs that serve to calm a person with Post Traumatic Stress Disorder during an anxiety attack.
  - The statement that an individual's inability to control their service animal leads to a presumption that the animal is not a service animal is also incorrect and over broad. A service animal being disruptive or not immediately within the control of an individual does not mean that the animal is not a service animal under the law. This section should state that this should not be an immediate presumption and that an individual should have the opportunity to retain control of their service animal before any action is taken that will separate the individual from their service animal.
  - The policy must additionally explain that it is a misdemeanor to exclude service dogs from places of public accommodation and public facilities, under the Service Animal Access Act, 720 ILCS 5/48-8 and the White Cane Law, 775 ILCS 30. People with disabilities often seek police for assistance when mistreated or denied services (such as in a restaurant or store). But all too often, they are denied police assistance, being told that it is a civil dispute, and the officers are not able to do anything about it. When stores and other public businesses bar service animals, the animals' owners are victims of a crime, and their complaints should be treated seriously.
- D. **Access to Department Facilities and Services by the General Public**
- The section should begin with explaining the responsibility of the CPD to ensure that the services provided at government buildings are accessible to individuals with disabilities.
  - In addition, this section or some other part of this policy should include guidance related to accommodating people with disabilities who are staying at the Department's jail.

The last two sections, IV. Relevant Statutes and V. Disability Parking Enforcement, are helpful information that officers and other CPD personnel should be knowledgeable about. This information should be supplemental to the additional guidance provided to officers and CPD

personnel in interacting with people with disabilities. The information related to “disability parking enforcement” should be updated to reflect the most recent updates from the Secretary of State or other parking enforcement regulations.

Finally, other sections should be added to explain how officers need to protect the rights of people with disabilities, including when interviewing them as crime victims, witnesses, or suspects. For example, people with disabilities should be able to directly communicate themselves and not have to rely on other service providers.

Sincerely,

A handwritten signature in black ink, appearing to read 'Amanda Antholt'.

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*Attorneys for the Coalition*