

UTAH SCHOOLS FOR THE DEAF AND THE BLIND

AMERICANS WITH DISABILITIES ACT COMPLAINT PROCEDURE

1 PHILOSOPHY

It is the intent of the Utah Schools for the Deaf and the Blind (USDB) to comply with the provision of the Americans with Disabilities Act (ADA). This includes using personnel practices which do not discriminate against persons with disabilities and making reasonable accommodations so that persons with disabilities may have equal opportunities for employment and advancement. It also is the intent to make facilities, programs and activities accessible to persons with disabilities.

2 PURPOSE

2.1 This rule is promulgated pursuant to Section 63-46a-3 (2) of the State Administrative Rule making Act. The state, pursuant to 28 CFR 35.107 adopts, defines, and publishes within this rule complaint procedures providing for prompt and equitable resolution of complaints filed in accordance with Title II of the Americans With Disabilities Act.

2.1.1 The provision of 28 CFR 35 implements the provisions of Title II of the Americans With Disabilities Act, 42 U.S.C. 12201, which provides that no qualified individual with a disability, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by this or any such entity.

3 ROOO-1-2 DEFINITIONS

3.1 **The ADA/Section 504 Coordinator:** The public entity's coordinator, or his designee, who has responsibility for investigating and providing prompt and equitable resolution of complaints filed by qualified individuals with disabilities.

3.2 **The ADA/Section 504 State Coordinating Committee:** The committee with representatives designated by the directors of the following agencies:

3.2.1 Department of Human Resource Management;

3.2.2 Division of Risk Management;

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3.2.3 Division of Facilities Construction Management; and

3.2.4 Office of the Attorney General.

- 3.3 **Disability:** With respect to an individual with a disability as defined and covered under the ADA.
- 3.4 **Major life activities:** Functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.
- 3.5 **Individual with a disability:** A person who has a disability defined and covered under the ADA, who meets the essential eligibility requirement for the receipt of services or the participation in programs or activities provided by a public entity, or who would otherwise be an eligible applicant for vacant state positions, as well as those who are employees of the state.
- 3.6 **Public entity:** Any department, agency, independent commission or board, or any other instrumentality of the State of Utah.

4 R000-1-3 FILING OF COMPLAINTS

- 4.1 The complaint shall be filed in a timely manner to assure prompt, effective assessment and consideration of the facts, but no later than 60 days from the date of the alleged act of discrimination. However, any complaint alleging an act of discrimination occurring between January 26, 1992 and the effective date of this rule may be filed within 60 days of the effective date of this rule.
- 4.2 The complaint shall be filed with the public entity's ADA/Section 504 Coordinator (Assistant Superintendent) in writing or in another accessible format suitable to the individual.
- 4.3 Each complaint shall:
- 4.3.1 include the individual's name and address;
 - 4.3.2 include the nature and extent of the individual's disability;
 - 4.3.3 describe the public entity's alleged discriminatory action in sufficient detail to inform the public entity of the nature and date of the alleged violation;
 - 4.3.4 describe the action and accommodation desired; and

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4.3.5 be signed by the individual or by his/her legal representative.

4.4 Complaints filed on behalf of classes or third parties shall describe or identify by name, if possible, the alleged victims of discrimination.

5 RO00-1-5 INVESTIGATION OF COMPLAINT

5.1 The ADA/Section 504 Coordinator shall conduct an investigation of each complaint received. The investigation shall be conducted to the extent necessary to assure all relevant facts are determined and documented. This may include gathering all information listed in Section 3 (C) of this rule if it is not made available by the individual.

5.2 When conducting the investigation, the coordinator may seek assistance from the entity's legal, human resource and budget staff in determining what action, if any, shall be taken on the complaint before making any decision that would involve:

5.2.1 an expenditure of funds which is not absorbable within the agency's budget and would require appropriation authority;

5.2.2 facility modifications; or

5.2.3 reclassification or reallocation in grade. The coordinator may consult with the ADA/Section 504 State Coordinating Committee.

6 R000-1-6 ISSUANCE OF DECISION

6.1 Within 15 working days after receiving the complaint, the ADA/Section 504 Coordinator shall issue a decision outlining what action, if any, shall be taken on the complaint.

6.2 If the coordinator is unable to reach a decision within the 15 working day period, he/she shall notify the individual with the disability that the decision is being delayed, why, and what additional time is needed to reach a decision.

6.3 All decisions concerning the complaint shall be issued in writing, or in another acceptable suitable format.

7 R000-1-7 APPEALS

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- 7.1 The individual may appeal the decision of the ADA/Section 504 Coordinator by filing an appeal within five working days from the receipt of the decision.
- 7.2 The appeal shall be filed in writing with public entity's Executive Director or a designee other than the public entity's ADA/Section 504 Coordinator.
- 7.3 The filing of an appeal shall be considered as authorization by the individual to allow review of all information, including information classified as private or controlled, by the public entity's Executive Director or designee.
- 7.4 The appeal shall describe in sufficient detail why the coordinator's decision is in error, is incomplete or ambiguous, is not supported by the evidence, or is otherwise improper.
- 7.5 The Executive Director or designee shall review the factual findings of the investigation and the individual's statement regarding the inappropriateness of the coordinator's decision and arrive at an independent conclusion and recommendation. Additional investigations may be conducted, if necessary, to clarify questions of fact before arriving at an independent conclusion. Before making any decision regarding:
 - 7.5.1 an expenditure of funds which is not absorbable and would require appropriation authority,
 - 7.5.2 facility modifications, or
 - 7.5.3 reclassification or reallocation in grade, he/she shall consult with the State ADA/Section 504 Coordinating Committee.
- 7.6 The decision shall be issued within ten working days after receiving the appeal and shall be in writing or in another accessible format, suitable to the individual.
- 7.7 If the Executive Director or his designee is unable to reach a decision within the ten working day period, he/she will notify the individual regarding why the decision is being delayed and what additional time is needed to reach a decision. The notification must be in writing or in another accessible format, suitable to the individual.

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- 8.1 The record of each complaint and appeal, and all written records produced or received as part of such actions, shall be classified as protected, as defined under Section 63-2-304, until the ADA/Section 504 Coordinator, Superintendent, or their designees issue the decision at which time any portions of the record, which may pertain to the individual's medical condition, shall remain classified as private, as defined under Section 63-2-302, or controlled as defined in Section 63-2-303. All other information gathered as part of the complaint record shall be classified as private information. Only the written decision of the Coordinator, Superintendent or designees shall be classified as public information.

9 R000-1-9 RELATIONSHIP TO OTHER LAWS

- 9.1 This procedure does not prohibit or limit the use of remedies available to individuals under the State Anti- Discrimination Complaint Procedures Section (67-19-32), the Federal ADA/Section 504 Complaint Procedures (28 CFR Subpart F, beginning with Part 35.170,1991 edition), or any other Utah State or federal law that provides equal or greater protection for the rights of individuals with disabilities.

Title: ADA/SECTION 504 COMPLAINT PROCEDURE	
Authority: Administrative Staff Institutional Council	Effective Date: 5/10/94 12/14/94 Revision: