

R953, Americans with Disabilities Act Complaint Procedures¹

R953-1. Authority and Purpose

1.1. **Complaint Procedure Rulemaking:** This rule is promulgated pursuant to Section 63-46a-3 (2) of the State Administrative Rulemaking Act. The Office of the Commissioner and State Board of Regents, 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.

1.2. **Implementation of Federal Law and Rules:** 28 CFR 35 implements 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, shall be excluded from participation in or be denied the benefits of the services, programs, or activities of public entities such as the Office of the Commissioner or State Board of Regents, or be subjected to discrimination by this or any such entity.

R953-2. References

- 2.1. Utah Code §53B-1-106 (Appointment of Commissioner's Staff)
- 2.2. Policy and Procedures R141, Duties of the Commissioner of Higher Education

R953-3. Definitions

3.1. **"The ADA Coordinator":** the Commissioner or his or her designee who has responsibility for investigating and providing prompt and equitable resolution of complaints filed by qualified individuals with disabilities.

3.2. **"The ADA State Coordinating Committee":** that committee with representatives designated by the directors of the following agencies:

- 3.2.1. Office of Planning and Budget;
- 3.2.2. Department of Human Resource Management;
- 3.2.3. Division of Risk Management;
- 3.2.4. Division of Facilities Construction Management;
- 3.2.5. Office of the Attorney General.

3.3. **"Disability":** with respect to an individual with a disability, a physical or mental impairment that substantially limits one or more of the major life activities of such an individual; a record of such an impairment; or being regarded as having such an impairment.

¹ Adopted June 18, 1993.

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" (hereafter individual)**: a person who has a disability which limits one of her or his major life activities and who meets the essential eligibility requirement for the receipt of services or the participation in programs or activities provided by the Office of the Commissioner or State Board of Regents, or who would otherwise be an eligible applicant for vacant state positions, as well as those who are employees of the state.

R953-4. Filing of Complaints

4.1. **Timely Manner**: The complaint shall be filed in a timely manner to insure 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 1992 and the effective date of this rule may be filed within 60 days of the effective date of this rule.

4.2. **Filed with ADA Coordinator**: The complaint shall be filed with the Office of the Commissioner's ADA Coordinator in writing or in another accessible format suitable to the individual.

4.3. **Complaint Contents**: 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 Office of the Commissioner or State Board of Regent's alleged discriminatory action in sufficient detail to inform the Office or Board of the nature and date of the alleged violation;

4.3.4. describe the action and accommodation desired; and

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

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

R953-5. Investigation of Complaint

5.1. **Determine and Document Facts**: The ADA 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 3.3 of this rule if it is not made available by the individual.

5.2. **Assistance**: When conducting the investigation, the coordinator may seek assistance from the Office of the Commissioner's legal, human resource and budget staff in determining what action, if any, shall be taken on the complaint. The coordinator shall consult with the ADA State Coordinating Committee before making any decision that would involve an expenditure of funds which is not absorbable within the budget of the Commissioner's Office.

R953-6. Issuance of decision

6.1. Decision Within 30 Days: Within 30 working days after receiving the complaint, the ADA Coordinator shall issue a decision in writing or in another acceptable suitable format stating what action, if any, shall be taken on the complaint.

6.2. Notification of Delay: If the coordinator is unable to reach a decision within the 30 working day period, he or she shall notify the individual with a disability in writing or by another acceptable suitable format why the decision is being delayed and what additional time is needed to reach a decision.

R953-7. Appeals

7.1. Notice of Appeal: The individual may appeal the decision of the ADA Coordinator by filing an appeal within five working days from the receipt of the decision.

7.2. Filed with Commissioner or Designee: The appeal shall be filed in writing with the Commissioner or designee other than the Office of the Commissioner's ADA Coordinator.

7.3. Appeal Authorizes Review: 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 Commissioner or designee.

7.4. Sufficient Detail: 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. Independent Conclusions and Recommendation: The Commissioner or designee shall review the factual finding 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 the questions of fact before arriving at an independent conclusion. The Commissioner or designee shall consult with the ADA State Coordinating Committee before making any decision that would commit the Commissioner or designee to an expenditure of funds which is not absorbable within the budget of the Commissioner's Office.

7.6. Decision within Ten Days: The decision shall be issued within ten working days after receiving the appeal and shall be in writing or another accessible suitable format to the individual.

7.7. Notification of Delay: If the Commissioner or designee is unable to reach a decision within the ten working day period, she or he shall notify the individual in writing or by another acceptable suitable format why the decision is being delayed and the additional time needed to reach a decision.

R953-8. Classification of records

8.1. GRAMA Classifications: 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 Utah Code §63-2-304 until the ADA coordinator, Commissioner 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 Utah Code §63-2-302 or controlled as defined in Utah Code §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, Commissioner, or designees shall be classified as public information.

R953-9. Relationship to Other Laws

9.1. Equal or Greater Remedies Under Other Laws, Regulations or Rules Still Available: This rule does not prohibit or limit the use of remedies available to individuals under the State Anti-Discrimination Complaint Procedures (Utah Code §67-19-32); the Federal ADA 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.