**R895. Government Operations, Technology Services.**

**R895-2. Americans With Disabilities Act (ADA) Complaint Procedure.**

**R895-2-1. Authority and Purpose.**

(1) This rule is promulgated pursuant to Section 63G-3-201 of the State Administrative Rulemaking Act. The Division of Technology Services hereby adopts and defines a complaint procedure to provide for prompt and equitable resolution of complaints filed in accordance with Title II of the Americans With Disabilities Act, pursuant to 28 CFR 35.107, 1992 edition.

(2) 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 this division, or be subjected to discrimination by this division.

**R895-2-2. Definitions.**

(1) "Division" mean the Utah Division of Technology Services.

(2) "Division ADA Coordinator" means an individual, appointed by the director of the Division of Technology Services, who has responsibility for investigating and providing prompt and equitable resolution of complaints filed by qualified individuals with disabilities in accordance with the Americans With Disabilities Act, or provisions of this rule.

(3) "Disability" means, 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.

(4) "Major life activities" include caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, and working. A major life activity also includes the operation of a major bodily function, such as functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

(5) "Individual with a disability" (hereinafter "individual") means a person who has a disability which limits one of their 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 Division of Technology Services, or who would otherwise be an eligible applicant for vacant state positions, as well as those who are employees of the state.

**R895-2-3. Filing of Complaints.**

(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 March 8, 2006 and the effective date of this rule may be filed within 60 days of the effective date of this rule.

(2) The complaint shall be filed with the division's ADA Coordinator in writing or in another accessible format suitable to the individual.

(3) Each complaint shall:

(a) include the individual's name and address;

(b) include the nature and extent of the individual's disability;

(c) describe the division's alleged discriminatory action in sufficient detail to inform the department of the nature and date of the alleged violation;

(d) describe the action and accommodation desired; and

(e) be signed by the individual or by their legal representative.

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

**R895-2-4. Investigation of Complaint.**

(1) 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 Subsection 3(3) of this rule if it is not made available by the individual.

(2) When conducting the investigation, the coordinator may seek assistance from the division's legal, human resource and administrative services staff in determining what action, if any, shall be taken on the complaint. Before making any decision that would involve:

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

(b) facility modifications; or

(c) reclassification or reallocation in grade.

**R895-2-5. Issuance of Decision.**

(1) Within 15 working days after receiving the complaint, the ADA Coordinator shall issue a decision outlining in writing or another acceptable suitable format stating what action, if any, shall be taken on the complaint.

(2) If the coordinator is unable to reach a decision within the 15 working day period, the coordinator 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.

**R895-2-6. Appeals.**

(1) The individual may appeal the decision of the ADA Coordinator by filing an appeal within five working days from the receipt of the decision.

(2) The appeal shall be filed in writing with the division's director or a designee other than the division's ADA Coordinator.

(3) The filing of an appeal shall be considered as authorization by the individual to allow review of all information classified as private or controlled, by the division's director or designee.

(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.

(5) The 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 a decision that would involve the director or designee to:

(a) an expenditure of funds which is not absorbable and would require appropriation authority;

(b) facility modifications; or

(c) reclassification or reallocation in grade.

(6) The decision shall be issued within ten working days after receiving the appeal and shall be in writing or in another accessible suitable format to the individual.

(7) If the director or designee is unable to reach a decision within the ten working day period, the director or designee 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.

**R895-2-7. Relationship to Other Laws.**

This rule 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 Complaint Procedures (28 CFR Part 35.170, 1992 edition); or any other Utah State or federal law that provides equal or greater protection for the rights of individuals with disabilities.

**KEY: developmentally disabled, disabilities act**

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**Authorizing, and Implemented or Interpreted Law: 63G-3-201**