

1 **R277. Education, Administration.**

2 **R277-104. ADA Complaint Procedure.**

3 **R277-104-[2]1. Authority and Purpose.**

4 ~~[A.](1)~~ This rule is authorized pursuant to 28 CFR 35.107 which adopts, defines,
5 and publishes complaint procedures providing for prompt and equitable resolution of
6 complaints filed in accordance with Title II of the Americans with Disabilities Act, as
7 amended.

8 ~~[B.](2)(a)~~ The purpose of this rule is to establish ~~[USOE and USOR]~~ procedures
9 for ~~[non-USOE, non-USOR and non-Board employees]~~ individuals to file complaints
10 under the ~~[federal]~~ ADA ~~[law]~~ and to provide appropriate classification of the records of
11 complaints and appeals.

12 (b) A complaint filed by an employee of the Board is not subject to this rule, but is
13 governed by Section R477-8-15.

14 ~~[C. No qualified individual with a disability, by reason of such disability, shall be~~
15 ~~excluded from participation in or be denied the benefits of the services, programs, or~~
16 ~~activities of the USOE or USOR, or be subjected to discrimination by the USOE or~~
17 ~~USOR.]~~

18 **R277-104-[4]2. Definitions.**

19 ~~[A.](1)~~ "ADA" means the Americans with Disabilities Act, 42 U.S.C. 12201,
20 including the ADA Amendments Act of 2008, Pub. L. No. 110-325, which provides that
21 no qualified individual with a disability, by reason of such disability, be excluded from
22 participation in or be denied the benefits of the services, programs, or activities of a
23 public entity, or be subjected to discrimination ~~[by this or any such entity].~~

24 ~~[B. "The ADA Coordinator" means the designee of the Superintendent, who has~~
25 ~~responsibility for investigating and providing prompt and equitable resolution of~~
26 ~~complaints filed by qualified individuals with disabilities who are not USOE or USOR~~
27 ~~employees in accordance with the Americans with Disabilities Act, or provisions of this~~
28 ~~rule.]~~

29 ~~[C.](2)~~ "Days" means calendar days.

30 ~~[D.](3)~~ "Disability" means, with respect to an individual disability, a physical or
31 mental impairment that substantially limits one or more of the major life activities of such
32 an individual ~~[consistent with]~~ as defined in the [Americans with Disabilities Act, 42
33 U.S.C. 12201] ADA.

34 ~~[E. "Executive Director" means the Executive Director of the Utah State Office of~~
35 ~~Rehabilitation.]~~

36 ~~[F.](4)~~ "Major life activities" mean[s] functions such as caring for one's self,
37 performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and
38 working.

39 ~~[G.](5)~~ "Individual with a disability" ~~[(hereinafter individual)]~~ or "individual" means
40 a person who has a disability which limits one of his major life activities and who meets
41 the essential eligibility requirement for the receipt of services or the participation in
42 programs or activities. ~~[This rule is directed at non-employees, including all types and~~
43 ~~periods of employment, of the Board, the USOE or the USOR.]~~

44 ~~[H. "Superintendent" means the State Superintendent of Public Instruction:~~

45 ~~—— I. "USOE" means the Utah State Office of Education.~~

46 ~~—— J. "USOR" means the Utah State Office of Rehabilitation.]~~

47 **R277-104-3. Statement of Non-Discrimination.**

48 The Superintendent shall comply with the ADA in administering the services,
49 programs, and activities of the Board.

50 **R277-104-[3]4. Filing of Complaints.**

51 ~~[A. The complaint shall be filed in a timely manner to assure prompt, effective~~
52 ~~assessment and consideration of the facts, but not later than 30 days from the date of~~
53 ~~the alleged act of discrimination.~~

54 ~~—— B. The complaint shall be filed with the USOE's ADA Coordinator in writing or in~~
55 ~~another format reasonable for the individual and the USOE or USOR.]~~

56 (1) An individual may file a complaint by submitting a claim with the
57 Superintendent no later than 30 days from the date of the alleged act of discrimination.

58 (2) A complaint under Subsection (1) shall be made in writing or in another
59 format reasonable for the individual and the Superintendent.

60 ~~[C.]~~(3) Each complaint shall include:

61 ~~([1]a)~~ ~~[include]~~ the individual's name and address;

62 ~~([2]b)~~ ~~[include]~~ a description of the nature and extent of the individual's disability;

63 ~~([3]c)~~ ~~[describe the USOE's or USOR's]~~ a description of the alleged

64 discriminatory action in sufficient detail to inform the [USOE or USOR] ADA Coordinator
65 of the nature and date of the alleged violation;

66 ~~([4]d)~~ ~~[describe]~~ a description of the action [and] or accommodation [desired]
67 needed; and

68 ~~([5]e)~~ ~~[be signed by]~~ the signature of the individual or [by his] the individual's legal
69 representative.

70 **R277-104-~~[4]5.~~ [Investigation of] Action on Complaint.**

71 ~~[A. The ADA coordinator shall conduct an investigation of each complaint~~
72 ~~received. The investigation shall be conducted to the extent necessary to assure all~~
73 ~~relevant facts are determined and documented. This may include gathering all~~
74 ~~information listed in Section 3(C) of this rule if it is not made available by the individual.~~

75 ~~—— B. When conducting the investigation, the coordinator may seek assistance from~~
76 ~~the USOE's and USOR's legal, human resource, budget, and State Risk Management~~
77 ~~staff in determining what action, if any, shall be taken on the complaint.]~~

78 (1) The Superintendent shall investigate each complaint to the extent necessary
79 to assure all relevant facts are determined and documented.

80 (2) The Superintendent may receive investigative assistance from:

81 (a) the Attorney General's office;

82 (b) the Department of Human Resource Management;

83 (c) State Risk Management; and

84 (d) Board staff.

85 (3)(a) The Superintendent shall notify a claimant of the Superintendent's decision
86 in writing within 30 days of receiving a Complaint.

87 (b) If additional time is necessary to reasonably investigate a complaint, the
88 Superintendent shall notify the Claimant in writing of:

89 (i) the reasons for the delay; and

90 (ii) a date certain by which a decision will be provided.

91 (4) Unless the claimant files a request for reconsideration under Section R277-
92 104-6, the decision of the Superintendent is the final agency action.

93 **~~[R277-104-5. ADA Coordinator Recommendation:~~**

94 ~~—— A. Within 30 days, the ADA Coordinator shall make a recommendation outlining~~
95 ~~what action, if any, shall be taken by the USOE or USOR on the complaint to the~~
96 ~~Superintendent, Executive Director, or both depending upon the circumstances of the~~
97 ~~complaint.~~

98 ~~—— B. If the ADA Coordinator does not make a recommendation to the~~
99 ~~Superintendent within 30 days, the ADA Coordinator shall notify both the complainant~~
100 ~~and the Superintendent that the decision is delayed and provide a date certain for the~~
101 ~~investigation recommendation to be provided.~~

102 **~~R277-104-6. Superintendent or the Executive Director or Both Review and~~**
103 **~~Decision:~~**

104 ~~—— A. The Superintendent shall review the recommendation of the ADA Coordinator~~
105 ~~and make a final decision about action to be taken, if any, by the USOE or USOR.~~

106 ~~—— B. The Superintendent shall provide a written decision to the complainant no~~
107 ~~more than 10 working days from the receipt of the ADA Coordinator's recommendation.~~

108 ~~—— C. In making the decision, the Superintendent shall consult with the Executive~~
109 ~~Director if necessary and may discuss the investigation with the ADA Coordinator or~~
110 ~~other USOE or USOR employees, may gather additional information and interview other~~
111 ~~individuals with relevant information or expertise and shall give appropriate deference to~~
112 ~~the ADA Coordinator's fact finding and review of information.~~

113 ~~—— D. The Superintendent's decision is the final USOE and USOR administrative~~
114 ~~decision regarding the complaint.~~

115 ~~—— (1) If the complaint and recommendation is solely about USOR services or~~

116 facilities, the Superintendent shall consult with the Executive Director in making the
117 decision.

118 ~~——(2) If the complaint and decision include USOE actions or facilities only, the~~
119 ~~Superintendent shall make the final administrative decision.]~~

120 **R277-104-6. Reconsideration.**

121 (1) A claimant may file a request with the Superintendent to review a decision
122 under Subsection R277-104-5(3) within ten days of the date of the Superintendent's
123 decision.

124 (2) A request for reconsideration under Subsection (1) shall outline any error
125 alleged in the Superintendent's decision, which warrants reconsideration of the
126 Superintendent's proposed action.

127 (3) Following a request for reconsideration, the Superintendent may conduct
128 additional investigation, if warranted.

129 (4) The Superintendent shall issue a final decision in writing within 30 days of a
130 request for reconsideration under Subsection (1), which action shall be the final agency
131 action.

132 **R277-104-7. Classification of Records.**

133 ~~[A:]~~(1) The investigative record of each complaint and all written records
134 produced or received as part of such investigations, recommendations, or actions, shall
135 be classified as protected under Section 63G-2-305, until the [Superintendent issues the
136 decision] Superintendent's action is final.

137 ~~[B:]~~(2) The Superintendent shall classify [Any] any portion[s] of [the] a record
138 which pertain to an individual's medical condition [shall classified] as private, [as
139 defined under] in accordance with Subsection 63G-2-302(1)(b), or controlled, [as
140 defined in] in accordance with Section 63G-2-304. [All other information gathered as
141 part of the complaint record shall be classified as protected information].

142 ~~[C:]~~(3) The final written decision of the Superintendent shall be public
143 [information], subject to the provisions of Title 63G, Chapter 2, Government Records

144 Access and Management Act.

145 **R277-104-8. Relationship to Other Laws.**

146 (1) This rule does not prohibit or limit the use of remedies available to ~~[the]~~ an
147 individual[s] under:

148 (a) Section 67-19-32;

149 (b) ~~[the Federal ADA Complaint Procedures (]28 CFR, Subpart F, Complaint~~
150 Procedures [beginning with Part 35.170, 1992 edition)]; or

151 (c) any other Utah state or federal law that provides equal or greater protection
152 for the rights of individuals with disabilities.

153 **KEY: complaints, disabled persons**

154 **Date of Enactment or Last Substantive Amendment: June 7, 2012**

155 **Notice of Continuation: May 15, 2013**

156 **Authorizing, and Implemented, or Interpreted Law: 28 CFR 35.107**