***Creating and Implementing the***

***ADA Notice of Rights and Grievance Process***

***For the Public***

**ADA Obligation**

The required grievance administrative requirements help ensure that the needs of people with disabilities are addressed in the programs, activities, and services operated by a public entity. Having these requirements in place will not prevent all problems, but it will help to address many questions and problems efficiently and fairly.

**ADA Enforcement**

Formal ADA grievances can be made to the a state or local governmental entity. However, a complaint can be filed with the relevant federal agency without first filing a grievance with the state or local government entity. The complainant can also pursue a private lawsuit.

**ADA Grievance Process Guide**

## Who is ultimately responsible to create standard operating procedures to address the following:

## Assuring services and benefits are non-discriminatory.

## Setting up procedures where a reasonable modification of policy, practices, and activities can take place to afford access (can include accommodations).

## Setting up procedures to assure effective communication with the public who have disabilities that affect their communication.

## Communicating these standard operating procedures throughout the department.

## Operation Manual

## Checklists

## Flowchart

## Training

## Who will be responsible for creating the ADA Notice of Rights and the ADA Grievance procedures/process?

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1. Who will be responsible for providing alternative formats of the Notice of Rights and ADA Grievance Procedures and any documentation involved in the complaint process?
   1. how will alternative formats be obtained and distribute?
2. Who is the target audience for the ADA Notice of Rights and Grievance procedures?
   1. Include everyone who interacts – or would potentially interact – with the department

# How will ADA rights and grievance procedures be widely publicized?

# Post on website homepage

# Service handbook and brochures

# Program forms

# Waiting rooms

# Bathrooms

# Entrances

# Include distribution to agency heads

# Make sure the staff who serve the public are fully aware of the ADA Grievance process and are able to inform the public.

# Filing a grievance – the intake process.

* + 1. Fill out a grievance form on-line?
    2. Fill out a grievance form in a field office?
    3. Phone call, email, or in-person talk to the field office manager?
    4. Phone call, email, or in-person talk the ADA Coordinator?
    5. Phone call, email, or in-person talk Deputy Director?

## Who will ultimately receive and address/investigate the ADA grievance in a timely and fair manner? Who is best to address the nature of the complaint?

* + 1. Lead ADA Coordinator?
    2. Local level – Field office manager?
    3. Department level – Deputy Director?

## How will the grievance make its way to the ADA designated person(s)?

## Electronic record/log of the grievance?

## G drive?

## Standard operation procedures?

## Paper record?

## Customized ADA grievance computer program?

## Who, with appropriate authority, will provide a prompt and equitable resolution to the grievance? What actions will be taken?

## How will the resolution/decision be communicated to the complainant?

## What is the training plan to assure that those responsible in the grievance process are fully educated in Title II of the ADA?

## Make sure the staff that directly serves the Public are included

## Should mediation be an option that is included in the resolution process? If so, how will it be implemented?

## Who will be responsible for assuring that these obligations/procedures are carried through to all of the department’s contractors/vendors that serve the department program’s public?

## How will the appeal process of an adverse decision work?

## Who is designated to consider and decide an appeal?

## If complainant is denied – what process is in place to notify the complainant of their right to file a grievance with the appropriate federal enforcement agency of the US Dept. of Education and the US Dept. of Justice?

## Can the appeal decision be appealed in a higher authority setting?

## Grievance files

## Where files will be kept

## How long files will be kept

***The above information was compiled by Julie Ballinger, Affiliate, Southwest ADA Center and Guy Surdi, Disability Specialist, New Mexico Governor’s Commission on Disability.***

This information herein is intended solely as informational guidance and is neither a determination of legal rights or responsibilities under the ADA or any other law, nor binding on any agency with enforcement responsibility under the ADA or any other law.

* **U.S Department of Justice Technical Assistance is Attached**

**GUIDANCE FROM THE U.S. DEPARTMENT OF JUSTICE**

Following **excerpts** are from the **U.S. Department of Justice’s** “ADA Best Practices Tool Kit for State and Local Governments Chapter 2 ADA Coordinator, Notice & Grievance Procedure: Administrative Requirements Under Title II of the ADA” at [www.ada.gov/pcatoolkit/chap2toolkit.htm](http://www.ada.gov/pcatoolkit/chap2toolkit.htm)

**Notice of the ADA’s Provisions** (Notice of ADA Rights)

There are three main considerations for providing notice:

1. Who is the target audience for the ADA notice?

2. What information shall the notice include?

3. Where and how should the notice be provided?

**Who is the target audience for the ADA notice?**

The target audience for public notice includes applicants, beneficiaries, and other people interested in the state or local government’s programs, activities, or services. **The audience is** expansive and includes everyone who interacts – or would potentially interact – with the state or local government.

**What information shall the notice include?**

The notice is required to include relevant information regarding Title II of the ADA, and how it applies to the programs, services, and activities of the public entity.

The notice should not be overwhelming. An effective notice states the basics of what the ADA requires of the state or local government without being too lengthy, legalistic, or complicated. It should include the name and contact information of the ADA Coordinator.

How and where should the notice be provided?

It is the obligation of the head of the public entity to determine the most effective way of providing notice to the public about their rights and the public entity’s responsibilities under the ADA.

Publishing and publicizing the ADA notice is not a one-time requirement. State and local governments should provide the information on an ongoing basis, whenever necessary. If you use the radio, newspaper, television, or mailings, re-publish and re-broadcast the notice periodically.

**Some Ways to Provide Notice to Interested Persons**

• Include the notice with job applications

• Publish the notice periodically in local newspapers

• Broadcast the notice in public service announcements on local radio and television stations

• Publish the notice on the government entity’s website (ensure that the website is accessible)

• Post the notice at all facilities

• Include the notice in program handbooks

• Include the notice in activity schedules

• Announce the notice at meetings of programs, services, and activities

• Publish the notice as a legal notice in local newspapers

• Post the notice in bus shelters or other public transit stops

**The information must be presented so that it is accessible to al**l. Therefore, it must be available in alternative formats.

**The Grievance Process**

**The grievance procedure should include**:

* a description of how and where a grievance under Title II may be filed with the government entity;
* if a written grievance is required, a statement notifying potential complainants that alternative means of filing will be available to people with disabilities who require such an alternative;
* a description of the time frames and processes to be followed by the complainant and the government entity;
* information on how to appeal an adverse decision; and
* a statement of how long grievance files will be retained.

Once a state or local government establishes a grievance procedure under the ADA, it should be distributed to all agency heads. Post copies in public spaces of public building and on the government’s website. Update the procedure and the contact information as necessary. In addition, the procedure must be available in alternative formats so that it is accessible to all people with disabilities.

**EXAMPLES FROM THE DEPARTMENT OF JUSTICE**

[www.ada.gov/pcatoolkit/chap2toolkit.htm](http://www.ada.gov/pcatoolkit/chap2toolkit.htm)

**NOTICE OF ADA RIGHTS EXAMPLE**

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| --- |
| U.S. Department of Justice Seal    **NOTICE UNDER THE AMERICANS WITH  DISABILITIES ACT**  In accordance with the requirements of title II of the Americans with Disabilities Act of 1990 ("ADA"), the **[name of public entity]** will not discriminate against qualified individuals with disabilities on the basis of disability in its services, programs, or activities.  ***Employment:*** **[name of public entity]** does not discriminate on the basis of disability in its hiring or employment practices and complies with all regulations promulgated by the U.S. Equal Employment Opportunity Commission under title I of the ADA.  ***Effective Communication:* [Name of public entity]** will generally, upon request, provide appropriate aids and services leading to effective communication for qualified persons with disabilities so they can participate equally in **[name of public entity’s]** programs, services, and activities, including qualified sign language interpreters, documents in Braille, and other ways of making information and communications accessible to people who have speech, hearing, or vision impairments.  ***Modifications to Policies and Procedures:*** **[Name of public entity]** will make all reasonable modifications to policies and programs to ensure that people with disabilities have an equal opportunity to enjoy all of its programs, services, and activities.  For example, individuals with service animals are welcomed in **[name of public entity]** offices, even where pets are generally prohibited.  Anyone who requires an auxiliary aid or service for effective communication, or a modification of policies or procedures to participate in a program, service, or activity of **[name of public entity],** should contact the office of  ***[name and contact information for ADA Coordinator]*** as soon as possible but no later than 48 hours before the scheduled event.  The ADA does not require the **[name of public entity]** to take any action that would fundamentally alter the nature of its programs or services, or impose an undue financial or administrative burden.  Complaints that a program, service, or activity of **[name of public entity]** is not accessible to persons with disabilities should be directed to ***[name and contact information for ADA Coordinator].***  **[Name of public entity]** will not place a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the cost of providing auxiliary aids/services or reasonable modifications of policy, such as retrieving items from locations that are open to the public but are not accessible to persons who use wheelchairs. |

**U.S. DOJ ADA GRIEVANCE PROCEDURE EXAMPLE**

**[Name of public entity]  
Grievance Procedure under  
The Americans with Disabilities Act**

This Grievance Procedure is established to meet the requirements of the Americans with Disabilities Act of 1990 ("ADA").  It may be used by anyone who wishes to file a complaint alleging discrimination on the basis of disability in the provision of services, activities, programs, or benefits by the **[name of public entity]**.

The [**e.g. State, City, County, Town**]'s Personnel Policy governs employment-related complaints of disability discrimination.

The complaint should be in writing and contain information about the alleged discrimination such as name, address, phone number of complainant and location, date, and description of the problem.  Alternative means of filing complaints, such as personal interviews or a tape recording of the complaint, will be made available for persons with disabilities upon request.

The complaint should be submitted by the grievant and/or his/her designee as soon as possible but no later than 60 calendar days after the alleged violation to:

**[Insert ADA Coordinator’s name]**

**ADA Coordinator [and other title if appropriate]**

**[Insert ADA Coordinator’s mailing address]**

Within 15 calendar days after receipt of the complaint, ***[ADA Coordinator's name]*** or ***[his/her]*** designee will meet with the complainant to discuss the complaint and the possible resolutions.

Within 15 calendar days of the meeting, ***[ADA Coordinator's name]***or ***[his/her]*** designee will respond in writing, and where appropriate, in a format accessible to the complainant, such as large print, Braille, or audio tape.

The response will explain the position of the**[name of public entity]**and offer options for substantive resolution of the complaint.

If the response by ***[ADA Coordinator's name]***or ***[his/her]*** designee does not satisfactorily resolve the issue, the complainant and/or his/her designee may appeal the decision within 15 calendar days after receipt of the response to the **[City Manager/County Commissioner/ other appropriate high-level official]** or ***[his/her]*** designee.

Within 15 calendar days after receipt of the appeal, the **[City Manager/County Commissioner/ other appropriate high-level official]** or ***[his/her]*** designee will meet with the complainant to discuss the complaint and possible resolutions.

Within 15 calendar days after the meeting, the **[City Manager/County Commissioner/ other appropriate high-level official]** or ***[his/her]*** designee will respond in writing, and, where appropriate, in a format accessible to the complainant, with a final resolution of the complaint.

All written complaints received by ***[name of ADA Coordinator]***or ***[his/her]*** designee, appeals to the **[City Manager/County Commissioner/ other appropriate high-level official]** or ***[his/her]*** designee, and responses from these two offices will be retained by the **[public entity]** for at least three years.