

R277-104 received final approval by the Utah State Board of Education on May 3, 2018. R277-104 is published in the June 1, 2018 Utah State Bulletin, subject to a 30-day comment period, with a first possible effective date of July 9, 2018.

## **R277. Education, Administration.**

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

#### **R277-104-1. Authority and Purpose.**

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

(2)(a) The purpose of this rule is to establish procedures for individuals to file complaints under the ADA and to provide appropriate classification of the records of complaints and appeals.

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

#### **R277-104-2. Definitions.**

(1) "ADA" means the Americans with Disabilities Act, 42 U.S.C. 12201, including the ADA Amendments Act of 2008, Pub. L. No. 110-325, 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.

(2) "Days" means calendar days.

(3) "Disability" means, with respect to an individual disability, a physical or mental impairment that substantially limits one or more of the major life activities of such an individual as defined in the ADA.

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

(5) "Individual with a disability" or "individual" means a person who has a disability which limits one of his major life activities and who meets the essential eligibility requirement for the receipt of services or the participation in programs or activities.

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

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

#### **R277-104-4. Filing of Complaints.**

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

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

(3) Each complaint shall include:

(a) the individual's name and address;

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

- (c) a description of the alleged discriminatory action in sufficient detail to inform the ADA Coordinator of the nature and date of the alleged violation;
- (d) a description of the action or accommodation needed; and
- (e) the signature of the individual or the individual's legal representative.

#### **R277-104-5. Action on Complaint.**

- (1) The Superintendent shall investigate each complaint to the extent necessary to assure all relevant facts are determined and documented.
- (2) The Superintendent may receive investigative assistance from:
  - (a) the Attorney General's office;
  - (b) the Department of Human Resource Management;
  - (c) State Risk Management; and
  - (d) Board staff.
- (3)(a) The Superintendent shall notify a claimant of the Superintendent's decision in writing within 30 days of receiving a Complaint.
- (b) If additional time is necessary to reasonably investigate a complaint, the Superintendent shall notify the Claimant in writing of:
  - (i) the reasons for the delay; and
  - (ii) a date certain by which a decision will be provided.
- (4) Unless the claimant files a request for reconsideration under Section R277-104-6, the decision of the Superintendent is the final agency action.

#### **R277-104-6. Reconsideration.**

- (1) A claimant may file a request with the Superintendent to review a decision under Subsection R277-104-5(3) within ten days of the date of the Superintendent's decision.
- (2) A request for reconsideration under Subsection (1) shall outline any error alleged in the Superintendent's decision, which warrants reconsideration of the Superintendent's proposed action.
- (3) Following a request for reconsideration, the Superintendent may conduct additional investigation, if warranted.
- (4) The Superintendent shall issue a final decision in writing within 30 days of a request for reconsideration under Subsection (1), which action shall be the final agency action.

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

- (1) The investigative record of each complaint and all written records produced or received as part of such investigations, recommendations, or actions, shall be classified as protected under Section 63G-2-305, until the Superintendent's action is final.
- (2) The Superintendent shall classify any portion of a record which pertain to an individual's medical condition as private, in accordance with Subsection 63G-2-302(1)(b), or controlled, in accordance with Section 63G-2-304.
- (3) The final written decision of the Superintendent shall be public, subject to the provisions of Title 63G, Chapter 2, Government Records Access and Management Act.

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

(1) This rule does not prohibit or limit the use of remedies available to an individual under:

- (a) Section 67-19-32;
- (b) 28 CFR, Subpart F, Complaint Procedures; or
- (c) any other Utah state or federal law that provides equal or greater protection for the rights of individuals with disabilities.

**KEY: complaints, disabled persons**

**Date of Enactment or Last Substantive Amendment: May 3, 2018**

**Notice of Continuation: May 15, 2018**

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