

Texas Department of Transportation

Grievance Procedure under

The Americans with Disabilities Act

This **Grievance Procedure** is established in accordance with 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 by or access to activities, programs or facilities of the Texas Department of Transportation.

Any person who believes that he or she, individually, as a member of the disabled community, has been subject to discrimination prohibited by the Americans with Disabilities Act, Sections 504 or 508 of the Rehabilitation Act of 1973, as amended, may file a complaint with TxDOT. A complaint may also be filed by a representative on behalf of such a person or group.

Complaints submitted shall be in writing and must be signed by the complainant and/or the representative. Complainants can complete TxDOT's External Discrimination Complaint Form available on TxDOT's website in English and Spanish.

The complaint should be submitted by the grievant and/or his or her designee as soon as possible but no later than 180 calendar days after the alleged violation to:

Michael D. Bryant, Director
Civil Rights Division
125 E. 11th Street
Austin, TX 78701
512-416-4700 (Voice)
512-486-5539 (FAX)
7-1-1 (Texas Relay)
Michael.D.Bryant@txdot.gov

Roles and Responsibilities

The Civil Rights Division (CIV) is charged with the primary responsibility of processing ADA external discrimination complaints received by TxDOT. All discrimination complaints received by DDs must be referred to CIV for review and action. CIV processes complaints consistent with FHWA's External Discrimination Complaint Handling Procedures, which includes maintaining a complaint log, using form letters, and its investigative process.

Time frame for Filing Complaints

In order to have the complaint considered under ADA, the complaint must be filed no later than 180 days after:

- The date of the alleged act of discrimination; or
- The date the person(s) became aware of the alleged act(s) of discrimination; or
- Where there has been a continuing course of conduct, the date on which that conduct was discovered.

In either case, TxDOT may extend the time for filing or waive the time limit in the interest of justice, specifying in writing the reason for doing so.

Processing Complaints

Complaints shall set forth, as fully as possible, the facts and circumstances surrounding the alleged discrimination. In the event that a person makes a verbal complaint to a TxDOT employee, that person shall be interviewed by CIV. If necessary, CIV will assist the person in documenting the complaint in writing and submitting the written version to the person for signature.

Within ten (10) days of receipt of the complaint, CIV will acknowledge receipt, inform the complainant of action proposed or taken, and advise the complainant of other avenues of redress available, such as filing with the investigation and Adjudications Unit at FHWA Headquarters Office of Civil Rights and the U.S. DOT.

ADA complaints filed directly with TxDOT against its subrecipients will be processed in accordance with the FHWA approved complaint procedures as required under 23 CFR 200.9(b)(3). However, FHWA has the authority for making all final decisions, including dismissing complaints and issuing letters of findings. All complaints are investigated unless:

- The complaint is withdrawn by the complainant;
- The complainant fails to provide required information after numerous attempts;
- The complaint is not filed timely; or
- The complaint is involving an issue other than discrimination or if the complaint is not based on the disabled protected class.

Complaints filed under ADA with TxDOT in which TxDOT is named as the respondent will be forwarded to FHWA within ten (10) days of receipt of the allegation for processing. The following information will be provided to FHWA:

- Name, address, and phone number of complainant;

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- Name(s) and address(es) of alleged discriminating official(s);
- Basis of complaint (i.e., disability, race, color, national origin, sex, age);
- Date of alleged discriminatory act(s);
- Date of complaint received by TxDOT;
- A statement of the complaint;
- Other agencies (state, local or federal) where the complaint has been filed; and
- An explanation of the actions TxDOT has taken or proposed to resolve the issue raised in the complaint.

Investigative Process

Within sixty (60) days of receipt of the complaint, CIV will conduct and complete an investigation of the allegation and based on the information obtained, will render a recommendation for action in a report of findings to FHWA. FHWA will issue final decisions in all cases, including those complaints investigated by CIV. The complaint will be resolved by informal means whenever possible. Such informal attempts and their results will be summarized in the report of findings. No information is disclosed with TxDOT personnel or any other party not involved in the investigative process.

Developing an Investigative Plan

An investigative Plan (IP) will be prepared to define the issues and lay out the blueprint to complete the investigation. The IP is used to keep the investigation on track and focused on the issues and sources of evidence or corroboration. The IP outline is as follows:

- Complainant name and contact information, and that of their attorney, if applicable;
- Respondent name and contact information, and that of their attorney, if applicable;
- Applicable laws and regulations;
- Basis of complaint (i.e., disability, race, color, national origin, sex, age);
- Allegation(s)/Issue(s);
- Background
- Interviewee(s) name and contact information;
- Questions for the complainant; respondent, and interviewee(s);
- Evidence to be obtained;
- Estimated investigation timeline; and
- Remedy sought by the complainant(s).

Documentation

CIV maintains a complaint log, intake form and activity log to document all activity related to the complaint. The information captured on these documents includes:

- Grievance Tracking Number
- Complainant's name and if provided, disability, race, color, age, gender and national origin;
- Respondent's name;
- Basis(es) of the ADA complaint;
- Allegation(s)/Issue(s) surrounding the discrimination complaint;
- Agency/Division/District
- Investigation Activity
- Date the discrimination complaint was filed;
- Date the investigation was completed;
- Disposition/Status
- Disposition date; and
- Other pertinent information.

Preparing the Report of Investigation

A Report of Investigation (ROI) will be prepared setting forth all the relevant facts obtained during the investigation. The ROI will include a finding for each issue and recommendations, where necessary. Documentation regarding any attempts and outcomes that were made to resolve the complaint prior to the initial receipt of the written complaint will be summarized in the ROI. The ROI and recommended decision will be forwarded to the FHWA for a final decision.

Texas Department of Transportation

Grievance Appeals Process under

The Americans with Disabilities Act

The Department of Justice (DOJ) Title II regulation requires a public entity that employs 50 or more persons to “adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by this part,” but it does not mention specifically what the grievance procedures should include. 28 CFR 35.107(b). Specifically, 28 CFR 35.107(b)(4) requires the entity to have an appeals process. TxDOT’s grievance appeals process is as follows:

1. Complainant may appeal outcome within 10 days of the decision. He/she must:
 - (a) Complete form (under development) to request an appeal.
 - (b) Submit to Appeals Team for review (to be identified by Director of Civil Rights Division).
2. The Appeals Team must review the reason for the appeal. Consider the following.
 - (a) Violation with no resolution,
 - (b) Violation with a resolution but time of barrier removal is unreasonable, and
 - (c) Do not agree with the resolution.
3. The Appeals Team reviews the request to:
 - (a) Determine if Agree/Disagree,
 - (b) Provide rationale & supportive documentation, and/or
 - (c) Provide new alternatives.
4. The Appeals Team returns the request to ADA Compliance Administrator/District/Division whichever is applicable to:
 - (a) Make necessary changes
 - (b) Provide the response to the Complainant
5. The ADA Administrator informs the Complainant of the decision.

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