

ADM-18.20 - ADA Title II Complaint Procedures

ADA TITLE II COMPLAINT PROCEDURES

Binding City Policy

BCP-ADM-18.20

Purpose

It is the policy of the City of Portland (“the City”) that no person may be excluded from, denied benefits of, or be otherwise subjected to discrimination in any City program, service, administrative act, or activity, on the basis of their disability. To ensure and monitor the City’s ongoing compliance with Title II of the Americans with Disabilities Act, this Administrative Rule establishes procedures to investigate and equitably resolve complaints under Title II of the Americans with Disabilities Act (“ADA Title II”).

Scope

Any person or class of persons who believes they have been the been denied access and/or have experienced discrimination in the receipt of City benefits, programs or services based on their disability or perceived disability, in violation of ADA Title II, has the right to file a complaint under this Administrative Rule with the City.

This Administrative Rules applies to all programs, services, or activities of the City and its subrecipients and contractors.

This Administrative Rule provides procedures for early and equitable resolution of complaints under ADA Title II. This Administrative Rule does not provide compensatory or punitive damages for the complainant.

The City’s complaint procedures for ADA Title II claims under this Administrative Rule is not exclusive. A person who files a complaint with the City under this Administrative Rule may also file complaints with other local, state, or federal agencies, or the courts and may seek private counsel. If a complaint is filed with the City under this Administrative Rule and is filed externally during the same time period, the City’s ADA Title II complaint procedures under this Administrative Rule may be suspended pending outcome of the external complaint. Filing a complaint under this Administrative Rule does not toll the time for filing claims under applicable local, state, or federal statutes.

Pursuant to agency procedure, it may be necessary for the City to notify and coordinate with federal agencies on complaints filed with the City.

Limitations

A) These ADA Title II complaint procedures under this Administrative Rule do not apply to complaints that relate to matters outside the jurisdiction of the City and ADA Title II, including but not limited to complaints against county, regional, state, or federal agencies; Tri-Met; Metro; Port of Portland; school districts; or private individuals or companies.

B) These ADA Title II complaint procedures under this Administrative Rule do not cover complaints based on protections under other Civil Rights statutes or protected classes.

C) The intent of this Administrative Rule is to provide alternative internal investigation and dispute resolution separate from those established for legal action against the City. These ADA Title II complaint procedures may be suspended when complainants use a legal channel, such as filing a tort claim notice or other litigation. The Responsible Bureau will notify the complainant that the City will cooperate with the legal process and whether an internal investigation under these Rules will be abated.

D) Complaints pertaining to Portland Police Bureau conduct or policies are referred to the Independent Police Review (“IPR”).

E) If a complaint is filed alleging discrimination not covered under these ADA Title II complaint procedures, the Responsible Bureau will notify the complainant that the complaint cannot be processed as an ADA Title II complaint and will be referred to the appropriate agency when possible.

ADA Title II Complaint Procedures

A) Filing a Complaint

1) To be accepted for review under these rules, the complaint must:

a) allege discrimination on the basis of disability or perceived disability;

b) be filed within one hundred eighty (180) calendar days of the alleged discrimination or when the alleged discrimination became known to the complainant; and

c) involve a City program, service, benefit, or activity, or an administrative act by the City or its employee, subrecipient, or contractor.

2) The complaint should be filed with the bureau, office, division, or City agency that is responsible for the facility, program, service, benefit, activity, event, communications, or contract or agreement, or where the situation, practice, or action implicated in the complaint took place (“Responsible Bureau”).

If the identity of the Responsible Bureau is not known, complaints may be filed with the City’s ADA Title II Manager for referral to the Responsible Bureau.

3) Complaints should be in writing if possible and may be in the complainant’s preferred language. Complainants may use the complaint form provided by the City or any other mechanism. Complaints made orally should be transcribed in writing by the person receiving the oral complaint.

4) Complaints should include:

a) the complainant’s name, address, phone number, email and/or other contact information;

b) the date of the alleged act of discrimination and/or the date when the complainant became aware of the alleged discrimination;

c) a brief description of the discriminatory act in sufficient detail to enable the Responsible Bureau to understand what occurred;

d) the basis for the alleged discrimination, including any information about the person(s) or class of persons who experienced the alleged discriminatory act(s); and

e) the names and contact information of any witnesses, including City employees or contractors.

B) Processing a Complaint

1) Complaint Tracking Number – the Responsible Bureau will assign the complaint a tracking number upon receipt of the complaint.

2) For purposes of this Administrative Rule, “business day” means when the City is open for business.

3) If a complaint meets the threshold requirements under (A)(1) of this section, the Responsible Bureau will:

a) notify the complainant, in writing, within fifteen (15) business days of receipt, that the complaint is accepted to pursue an investigation, and provide the tracking number; and

b) advise the complainant upon notification to accept the complaint that they have the right to file complaints with other local, state, or federal agencies, or the courts.

c) send the ADA Title II Manager a copy of the complaint and Notice of Acceptance of the complaint.

C) Dismissing a Complaint

1) The Responsible Bureau may dismiss a complaint for any of the following reasons:

a) the complainant withdraws the complaint;

b) the complainant fails to respond to three or more requests for additional information needed to process the complaint;

c) the complainant cannot be located; or

d) the complaint does not meet the threshold requirements under (A)(1) of this section. If a complaint does not meet the threshold requirements under (A)(1), the Responsible Bureau will provide written notification to the complainant within fifteen (15) business days of receipt of the written complaint.

2) Notifications dismissing a complaint must provide:

a) the basis of the dismissal and the tracking number, and

b) advise the complainant that they have the right to file complaints with other local, state or federal agencies, or the courts.

3) If a complaint is dismissed under this subsection:

a) the Responsible Bureau must retain a copy of the complaint and Notice of Dismissal in its complaint management record; and

b) provide a copy of the complaint and Notice of Dismissal to the complainant and the ADA Title II Manager.

D) Investigating and Resolving a Complaint

1) Once a complaint has been accepted under (B)(3) of this section, the Responsible Bureau will manage and coordinate the complaint investigation, explore options for resolution, and attempt to resolve the complaint at the lowest level possible. Informal mediation as a means of resolution may be used at any stage. The Responsible Bureau may seek the technical assistance of The Office of Equity and Human Rights (OEHR) citywide ADA Title II Division and The Office of the City Attorney for advice on investigating and responding to the complaint. Bureaus and offices may establish additional policies and procedures for complaint investigation and resolution as appropriate to internal operations and administration and in accordance with these rules.

2) The Responsible Bureau will work with identified City staff and the complainant on options for resolution.

3) The Responsible Bureau will complete discrimination complaint investigations within sixty (60) business days after written notice of acceptance of the complaint. If the investigation is expected to exceed 60 business days, the Responsible Bureau will notify the complainant and the ADA Title II Manager of a revised timeline and the reason for the delay.

4) Once the investigation is complete, the Responsible Bureau must provide a written response to the complainant with the findings and actions by the Responsible Bureau. A written draft response will be sent to the ADA Title II Manager for review and comment at least five (5) business days prior to sending the final copy to the complainant. If the ADA Title II Manager does not submit comments within the five days, the Responsible Bureau will proceed with issuing the final written response to the complainant on or after the sixth day.

Monitoring

The Responsible Bureau must monitor implementation of any remedial actions and provide periodic updates to complainants on a schedule specified during resolution, copying the ADA Title II Manager.

Documentation and Reporting

A) The Responsible Bureau must maintain a detailed file for each complaint, including intake, decision, relevant communications, steps taken, findings, and responses, which must be retained for at least five years.

B) Bureaus and offices must collect data and submit relevant complaint information into the ADA Title II complaint tracking system as the complaint is investigated and resolved.

C) OEHR will collect and retain complaint information from citywide tracking.

D) Bureaus and offices must annually assess complaint data to monitor progress, inform quality improvement efforts, and support any other compliance activities including compliance reporting to the City and, as appropriate, to other agencies, as advised by the ADA Title II Manager and City Attorney.

Responsibility

A) The OEHR Director is authorized to administer and monitor this Administrative Rule.

B) The OEHR Director or designee is authorized to create forms to implement this Administrative Rule.

C) The ADA Title II Manager is responsible for:

1) supporting the OEHR Director in the administration and monitoring of the ADA Title II Complaint Procedures;

2) providing ongoing citywide guidance for all bureaus and offices regarding ADA Title II complaints;

3) maintaining a publicly accessible list of designated bureau/office ADA Title II Coordinators and any identified designees responsible for intake and management of ADA Title II complaints;

4) developing and managing mechanisms and systems for ongoing citywide tracking of ADA Title II complaints, including informational materials;

5) tracking, assessing, and reporting of citywide ADA Title II complaint data to demonstrate compliance; monitor compliance activities; inform training, resource needs, and quality improvement efforts to support ADA Title II compliance;

6) providing a complaint form that is accessible to the public that can be used by all bureaus/offices for ADA Title II complaints;

7) providing technical assistance to designated bureau/office personnel in the determination of applicability, completeness, investigation, analysis, resolution, and coordination/referral when needed.

D) Each bureau, office, or other City agency is responsible for complying with this Administrative Rule, addressing ADA Title II complaints, and developing and implementing any procedures specific to the management of ADA Title II complaints within that bureau/office, including:

1) identifying personnel responsible for managing the intake, investigation, resolution, documentation, reporting, and tracking of all complaints;

2) developing specific steps for completing the complaint process including intake, evaluation, coordination, referral, determination of applicability and completeness, investigation, analysis, remedial action development, implementation, resolution, recordkeeping, communications, tracking and reporting in a citywide tracking system;

3) developing tools, process, and timeframes for evaluating data generated from tracked ADA Title II complaints;

4) disseminating and maintaining information regarding notification of rights, ADA Title II complaint management, bureau/office contact information, and tracking processes to ALL staff and to the public;

5) providing OEHR data on complaint tracking, monitoring, evaluating, reporting and all other citywide ADA Title II compliance activities.

HISTORY

Adopted by the Chief Administrative Officer January 10, 2014.

Filed for inclusion in PPD January 10, 2014.

Amended by Ordinance No. 186755, passed by City Council August 13, 2014 and effective September 12, 2014.

Amended by Director of Office of Equity and Human Rights September 19, 2019.