# CHAPTER 7

# DISABILITY DISCRIMINATION GRIEVANCE PROCEDURE

**Authority**

N.J.S.A. 38A:3–6(a) and (*o*), 42 U.S.C. § 12101 et seq. and 28 C.F.R. § 35.107.

**Source and Effective Date**

R.1993 d.615, effective December 6, 1993.
See: 25 N.J.R. 1317(a), 25 N.J.R. 5472(a).

**Executive Order No. 66(1978) Expiration Date**

Chapter 7, Disability Discrimination Grievance Procedure, is exempt from Executive Order No. 66 under 28 C.F.R. Part 35.

**CHAPTER TABLE OF CONTENTS**

SUBCHAPTER 1. DEFINITIONS

5A:7–1.1 Definitions

SUBCHAPTER 2. GENERAL PROVISIONS

5A:7–2.1 Purpose
5A:7–2.2 Required ADA notice

SUBCHAPTER 3. DESIGNATED ADA COORDINATOR

5A:7–3.1 Designated ADA coordinator

SUBCHAPTER 4. ADA GRIEVANCE PROCEDURE

5A:7–4.1 Grievance procedure
5A:7–4.2 Grievance contents
5A:7–4.3 Grievance form
5A:7–4.4 Investigation

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## SUBCHAPTER 1. DEFINITIONS

### 5A:7–1.1 Definitions

The following words and terms, as used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

"ADA" means the Americans with Disabilities Act, 42 U.S.C.A. § 12101 et seq.

"Agency" means the New Jersey Department of Military and Veterans' Affairs.

"Designated decision maker" means the Adjutant General or his or her designee.

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## SUBCHAPTER 2. GENERAL PROVISIONS

### 5A:7–2.1 Purpose

(a) These rules are adopted by the agency in satisfaction of the requirements of the ADA and regulations promulgated pursuant thereto, 28 C.F.R. 35.107.

(b) The purpose of these rules is to establish a designated coordinator whose duties shall include assuring that the agency complies with and carries out its responsibilities under the ADA. Those duties shall also include the investigation of any complaint filed with the agency pursuant to N.J.A.C. 5A:7–4.

### 5A:7–2.2 Required ADA notice

In addition to any other advice, assistance or accommodation provided, a copy of the following notice shall be given to anyone who inquires regarding the agency's compliance with the ADA or the availability of accommodation which would allow a qualified individual with a disability to receive services or participate in a program or activity provided by the agency.

AGENCY NOTICE OF ADA PROCEDURE

The agency has adopted an internal grievance procedure providing for prompt and equitable resolution of grievances alleging any action prohibited by the U.S. Department of Justice regulations implementing Title 11 of the Americans with Disabilities Act. Title 11 states, in part, that "no otherwise qualified disabled individual shall, solely by reason of such disability, be excluded from participation in, be denied the benefits of or be subjected to discrimination" in programs or activities sponsored by a public entity.

Rules describing and governing the internal grievance procedure can be found in the New Jersey Administrative Code, N.J.A.C. 5A:7–1. As those rules indicate, grievances should be addressed to the agency's designated ADA Coordinator, who has been designated to coordinate ADA compliance efforts, at the following address:

ADA Coordinator
New Jersey Department of Military and Veterans' Affairs
CN 340
Trenton, New Jersey 08625

1. A grievance may be filed in writing or orally, but should contain the name and address of the person filing it, and briefly describe the alleged violation. A form for this purpose is available from the designated ADA coordinator. In cases of employment related grievances, the procedures established by the Department of Personnel, N.J.A.C. 4A:7–1.1 et seq. will be followed where applicable.

2. A grievance should be filed promptly within 30 days after the grievant becomes aware of the alleged violation. (Processing of allegations of discrimination which occurred before this grievance procedure was in place will be considered on a case-by-case basis.)

3. An investigation, as may be appropriate, will follow the filing of a grievance. The investigation will be conducted by the agency's designated ADA Coordinator. The rules contemplate informal but thorough investigations, affording all interested persons and their representatives, if any, an opportunity to submit evidence relevant to a grievance.

4. In most cases a written determination as to the validity of the grievance and a description of the resolution, if any, will be issued by the designated decision maker and a copy forwarded to the grievant no later than 45 days after its filing.

5. The ADA coordinator will maintain the files and records of the agency relating to the grievances filed.

6. The right of a person to a prompt and equitable resolution of the grievance filed hereunder will not be impaired by the person's pursuit of other remedies such as the filing of an ADA grievance with the responsible Federal department or agency or the New Jersey Division on Civil Rights. Use of this grievance procedure is not a prerequisite to the pursuit of other remedies.

7. The rules will be construed to protect the substantive rights of interested persons, to meet appropriate due process standards and to assure that the agency complies with the ADA and implementing Federal rules.

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## SUBCHAPTER 3. DESIGNATED ADA COORDINATOR

### 5A:7–3.1 Designated ADA coordinator

(a) The designated coordinator of ADA compliance and complaint investigation for the agency is:

ADA Coordinator

New Jersey Department of Military and Veterans' Affairs

CN 340

Trenton, New Jersey 08625

(b) All inquiries regarding the agency's compliance with the ADA and the availability of accommodation which would allow a qualified individual with a disability to receive services or participate in a program or activity provided by the agency should be directed to the designated coordinator identified in (a) above.

(c) All grievances alleging that the agency has failed to comply with or has acted in a way that is prohibited by the ADA should be directed to the designated ADA coordinator identified in this section, in accordance with the procedures set forth in N.J.A.C. 5A:7–4.

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## SUBCHAPTER 4. ADA GRIEVANCE PROCEDURE

### 5A:7–4.1 Grievance procedure

A grievance alleging that the agency has failed to comply with the ADA or has acted in a way that is prohibited by the ADA shall be submitted either in writing or orally to the designated ADA coordinator identified in N.J.A.C. 5A:7–3.1 within 30 days of the grievant becoming aware of the alleged violation. A grievance alleging employment discrimination will be processed pursuant to the rules of the Department of Personnel, N.J.A.C. 4A:7–1.1 through 3.4, if those rules are applicable.

### 5A:7–4.2 Grievance contents

(a) A grievance submitted pursuant to this subchapter may be submitted in or on the form set forth at N.J.A.C. 5A:7–4.3.

(b) A grievance submitted pursuant to this subchapter shall include the following information:

1. The name of the grievant and/or any alternate contact person designated by the grievant to receive communication or provide information for the grievant;

2. The address and telephone number of the grievant or alternate contact person; and

3. A description of manner in which the ADA has not been complied with or has been violated, including times and locations of events and names of witnesses if appropriate.

### 5A:7–4.3 Grievance form

The following form may be utilized for the submission of a grievance pursuant to this subchapter:

Americans with Disabilities Act Grievance Form

Date: _____
Name of grievant: _____
Address of grievant: _____
Telephone number of grievant: _____
Name, address and telephone number of alternate contact person: _____
_____

Agency alleged to have denied access:
Department: _____
Division: _____
Bureau or office: _____

Location: _____

Incident or barrier: _____

Please describe the particular way in which you believe you have been denied the benefits of any service, program or activity or have otherwise been subject to discrimination. Please specify dates, times and places of incidents, and names and/or positions of agency employees involved, if any, as well as names, addresses and telephone numbers of any witnesses to any such incident. Attach additional pages if necessary.

_____

_____

_____

_____

_____

_____

Proposed access or accommodation:

If you wish, describe the way in which you feel access may be had to the benefits described above, or that accommodation could be provided to allow access.

_____

_____

_____

A copy of the above form may be obtained by contacting the designated ADA coordinator identified at N.J.A.C. 5A:7–3.1.

**5A:7–4.4 Investigation**

(a) Upon receipt of a grievance submitted pursuant to this subchapter, the designated ADA coordinator will notify the grievant of the receipt of the grievance and the initiation of an investigation into the matter. The designated ADA coordinator will also indicate a date by which it is expected that the investigation will be completed, which date shall not be later than 45 days from the date of receipt of the grievance unless a later date is agreed to by the grievant.

(b) Upon completion of the investigation, the designated ADA coordinator shall prepare a report for review by the designated decision maker for the agency. The designated decision maker shall render a written decision within 45 days of receipt of the grievance, if practicable or unless a later date is agreed to by the grievant, which decision shall be transmitted to the grievant and/or the alternate contact person if so designated by the grievant.