

**CITY OF BERKELEY  
ADMINISTRATIVE REGULATIONS**

<b>A.R. NUMBER:</b>	<b>1.13</b>
<b>ORIGINAL DATE:</b>	<b>10/01/01</b>
<b>POSTING DATE:</b>	<b>9/6/2005</b>
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**SUBJECT: Section 504/ADA Grievance Procedure**

**PURPOSE**

The purpose of this policy is to:

1. Comply with Section 504, Title V, Subsection 84.7 (b) of the Rehabilitation Act of 1973, as amended, and its implementing regulations which specify that persons with disabilities are entitled to file complaints alleging that they have been excluded from participation in, have been denied the benefits of, or have been subjected to discrimination under any program or activity receiving Federal financial assistance solely by reason of his/her disability;
2. Comply with the U.S. Department of Justice regulations implementing Title II of the Americans with Disabilities Act (28 CFR Part 35 Section 35.107). This specifies that a public entity that employs 50 or more persons shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by this part.

**POLICY**

It shall be the policy of the City of Berkeley to ensure:

1. That all services and programs, including grants and contracts, are available to people with disabilities in the same manner as accorded to all other residents of the City of Berkeley; and
2. That complaints will be processed in an orderly fashion, allowing a complete and impartial investigation and resolution within a reasonable period of time; and,
3. That information and assistance will be provided to disabled persons, resulting in the orderly processing of the complaint(s).

This grievance policy shall apply to individuals who have a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment, and those who may be treated adversely by other people because of real or perceived disability (past emotional problem[s], cancer, mental retardation, etc.).

**LEGAL BASIS**1. Discrimination Prohibited

Section 504, Title V of the Rehabilitation Act of 1973 (29 USC 794), as amended, specifies: "No otherwise qualified disabled individual in the United States. . . shall, solely by his/her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance."

Title II of the Americans with Disabilities Act (28 CFR Part 35, section 35.130) specifies: "No otherwise qualified disabled individual shall, solely because of such disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination" in programs sponsored by a public entity.

Sections 11135-11139.5 of the California Government Code specifies: "No disabled person in California may be subjected to discrimination under any program or activity that receives any financial assistance from the State."

2. Designation of Responsible Employee

Section 504, Title V, Subsection 84.7 (a) specifies: "A recipient that employs fifteen or more persons shall designate at least one person to coordinate its efforts to comply with this [part]."

Title II of the Americans with Disabilities Act, (28 C.F.R, Part 35, section 35.107 (a)) specifies: "A public entity that employs 50 or more persons shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to it alleging its noncompliance with this part or alleging any actions that would be prohibited by this part."

Because the Disability Compliance Program is situated in the Department of Public Works, the City of Berkeley employee designated to serve as the Section 504/ADA Compliance Coordinator shall be the Director of the Department of Public Works, or his/her designee.

3. Adoption of Grievance Procedures

Section 504, Title V, Subsection 84.6 (b) specifies: "A recipient that employs fifteen or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints, alleging any action prohibited by this part."

Title II of the Americans with Disabilities Act, section 35.107 (b) specifies: "A public entity that employs 50 or more persons shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by this part."

## PROCEDURES

1. Any person with a disability who believes he/she has been subjected to discrimination based on disability may file a grievance under this procedure. It is unlawful for the City of Berkeley to retaliate against anyone who files a grievance or cooperates in the investigation of a grievance.
2. A grievance shall be in writing and contain the name, address and telephone number of the person filing the grievance (the grievant) the problem or action alleged to be discriminatory and the remedy or relief sought by the grievant. If needed, grievances may be filed using alternative formats upon request.
3. Grievances shall be processed in the following manner:

### Step 1:

Any person with a disability (and/or representative of this person) may discuss a complaint with the Department Director or his/her designee where the problem occurs within 60 days of the alleged discriminatory action. If the issue is not resolved within ten (10) working days following this discussion, the grievant may elect to move the grievance to Step 2.

### Step 2:

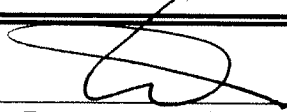
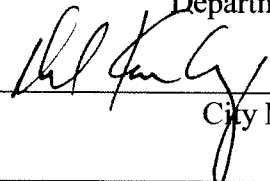
Any grievance not resolved by the procedures described in Step 1 above, may be referred to the Section 504/ADA Compliance Coordinator by the grievant or a representative of the grievant, or the Department Director, within 30 days of the Department Director's decision. Any such referral shall be in writing identifying the specific complaint, with the desired resolution. Upon request, referrals may be made using alternative formats.

The Section 504/ADA Compliance Coordinator (or his/her designee) shall conduct an investigation of the complaint to determine its validity. This investigation may be informal, but it must be thorough, affording all interested persons an opportunity to submit evidence relevant to the complaint. The Disability Compliance Coordinator will maintain the files and records of the City of Berkeley relating to such grievances.

The Section 504/ADA Compliance Coordinator will issue a written decision on the grievance within 45 working days following the formal filing as stated in Step 2.

- 4. The availability and use of this grievance procedure does not preclude a person with a disability from filing a complaint of discrimination with the Office of Civil Rights or other appropriate Federal agency.
- 5. The City of Berkeley will make appropriate arrangements to ensure that persons with disabilities can participate in or make use of these procedures. Such arrangements shall comply with Administrative Regulation 1.12, the Communication Access Policy

The Section 504/ADA Compliance Coordinator will be responsible for providing such arrangements, in addition to, when requested, providing a list of organizations representing persons with disabilities.

<p><b>RESPONSIBLE DEPARTMENT:</b> Public Works</p>  <p><b>TO BE REVISED:</b> Every 2 years</p>	<p>Approved by:  _____ Department Director</p> <p> _____ City Manager</p>
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