

ADA Grievance/ Complaint Procedure
Delaware Department of Transportation
Civil Rights Section
ADA Title II/Section 504 Complaint Policy & Procedure

The Delaware Department of Transportation has adopted a grievance procedure providing for prompt and equitable resolution of complaints alleging any action prohibited by the U.S. Department of Justice regulations including but not limited to Subpart B, Subsection 35.130, implementing Title II of the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973.

Section 504 of the Rehabilitation Act of 1973, 42 U.S.C. 794, et seq., provides: No qualified handicapped person shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, be subjected to discrimination under any program or activity that receives or benefits from Federal financial assistance.

Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. 12131, et seq., provides: No qualified individual with a disability shall, by reason of such disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination by a department, agency, special purpose district, or other instrumentality of a State or local government.

Who Can File a Complaint?

Any person or any specific class of persons, by themselves or by a representative, organizations or business entities that believe they have been subjected to discrimination or retaliation prohibited by Section 504 of the Rehabilitation Act of 1973 (Section 504), or Title II of the Americans with Disabilities Act of 1990 (ADA) may file a complaint.

What is a Complaint?

1. A complaint is a written or electronic statement concerning an allegation of discrimination that contains a request for the receiving office to take action. Complaints should be in writing and signed and may be filed by mail, fax, in person, or e-mail. A complaint should contain at least the following information:
 - a. A written explanation of what happened;
 - b. Information necessary to contact the complainant;
 - c. The basis of the complaint is a disability as defined by the Americans with Disabilities Act;

- d. The identification of the respondent, e.g., agency/organization alleged to have discriminated;
 - e. Sufficient information to understand the facts that led the complainant to believe that discrimination occurred; and,
 - f. The date(s) of the alleged discriminatory act(s).
2. While the above indicates a complaint should be in writing and signed, the receiving agency must accept complaints in alternate formats from persons with disabilities, upon request.
- a. The complaint may be filed on a computer disk, by audio tape, or in Braille.
 - b. The complainant may call the agency and provide the allegations by telephone. The agency will transcribe the allegations of the complaint as provided over the telephone and send a written complaint to the complainant for signature and confirmation of the accuracy of the written complaint.
 - c. Complaints in languages other than English will be translated and responded to in the language in which they were sent in accordance with E.O. 13166, "Improving Access to Services for Persons with Limited English Proficiency." DelDOT will provide translation services in as many languages as it has available to it.

A. Where to submit Complaints.

Complaints may be submitted to DelDOT or FHWA.

1. DelDOT address is:
P.O. Box 778
Dover, DE 19903
2. DelDOT Persons Authorized to Receive Complaints:
DelDOT ADA Title II Coordinator, (302) 760-2467
Email: dot.adarequest@state.de.us
Website: www.ada.deldot.gov
3. Complaints submitted to FHWA can be sent to:
FHWA, the DelMar Division Office
1201 College Park Road
Suite 102
Dover, DE 19904
(302) 734-5323
4. Complaints submitted to the Department of Justice can be sent to:
US Department of Justice
950 Pennsylvania Avenue, NW
Civil Rights Division
Disability Rights Section – 1425 NYAV
Washington, D.C. 20530
Fax: (202) 307-1197 Email: ADA.complaint@usdoj.gov

B. Timeframe for Filing Complaints

1. Complaints must be filed within 180 days of the last date of the alleged discrimination, unless the time for filing is extended for cause. The filing date of the complaint is the earlier of: (1) the postmark of the complaint, or (2) the date the complaint is received by any office authorized to receive complaints. An extension may be granted under any of the following circumstances:
 - a. The complainant could not reasonably be expected to know the act was discriminatory within the 180-day period, and the complaint was filed within 60 days after the complainant became aware of the alleged discrimination;
 - b. The complainant was unable to file a complaint because of incapacitating illness or other incapacitating circumstances during the 180-day period, and the complaint was filed within 60 days after the period of incapacitation ended;
 - c. The complainant filed a complaint alleging the same discriminatory conduct within the 180-day period with another Federal, State or local civil rights enforcement agency, and filed a complaint with DelDOT within 60 days after the other agency had completed its investigation or notified the complainant that it would take no further action;
 - d. The complainant filed, within the 180-day period, an internal grievance alleging the same discriminatory conduct that is the subject of DelDOT complaint, and the complaint is filed no later than 60 days after the internal grievance is concluded;
 - e. Unique circumstances generated by DelDOT action have adversely affected the complainant;
 - f. The discriminatory act is of a continuing nature; or
 - g. Some complaints may be referred to DelDOT by other agencies. In the event the referring agency has the complaint in its possession for an inordinately long period of time and the complainant filed his or her complaint with that agency within the 180-day timeframe, DelDOT will automatically grant an informal extension. In these cases, the complainant will not receive notification of the extension of the filing deadline.

C. DelDOT Responsibilities

1. Complaints filed under the ADA Title II/Section 504 will be investigated by DeIDOT in accordance with these complaint procedures.
2. DeIDOT may use contract investigators to conduct investigations if necessary to prevent or eliminate a backlog of complaints. All complaints will be investigated in accordance with approved complaint processing procedures.

Processing Complaints

A. Recording Complaints

Upon initial receipt, the complaint will be date stamped and logged in by the receiving office. Complaints filed online at www.ada.deldot.gov or submitted by email to dot.adarequest@state.de.us will receive an electronic return receipt.

B. Items Not Considered a Complaint

The following are examples of items that are not considered a complaint, unless the item contains a signed cover letter specifically asking that the agency take action concerning the allegations:

1. An anonymous complaint;
2. Inquiries seeking advice or information;
3. Courtesy copies of court pleadings;
4. Courtesy copies of complaints addressed to other local, State, or Federal agencies;
5. Newspaper articles; and,
6. Courtesy copies of internal grievances.

C. Reviewing Complaints

1. The complaint will be reviewed within 10 calendars days of receipt to determine whether it contains all the necessary information required for acceptance.
2. If the complaint is unclear or incomplete, the complainant will be contacted in writing or by telephone to obtain additional information. The complainant will have 15 calendars days to respond to the request for additional information.
3. Once the complaint is complete and no additional information is needed, the Complainant Consent/Release form and the Notice About Investigatory Uses of Personal Information form will be sent to the complainant for signature.

D. Complaint Jurisdiction

If it becomes clear that DeIDOT lacks jurisdiction over a complaint, the complaint will be referred to the appropriate authorized agency. A referral letter will be sent to the agency along with the complaint and any other documents collected. A letter will also be sent to

the complainant stating that the complaint has been referred to another agency and that DelDOT has closed the complaint.

E. Notification of Acceptance of Complaints

After determining the complaint will be accepted for investigation, a notification letter will be sent to the complainant and the respondent.

F. When the Complainant is Represented by an Attorney

Complainants represented by an attorney must provide a letter authorizing representation. The attorney will be copied on all correspondence with the complainant.

G. Timeframes for Investigations

ADA Title II/Section 504 complaint investigations will be completed within 90 days of receipt of the complete complaint unless circumstances exist justifying additional investigative time.

H. Withdrawal of Complaint

Complainants may withdraw their complaint at any time. This action closes the case without prejudice.

I. Dismissals

The DelDOT ADA Title II Coordinator has the authority to dismiss ADA Title II/Section 504 complaints. A complaint may be dismissed for any of the following reasons:

1. The complaint is not filed in a timely manner;
2. The complainant fails to respond to repeated requests for additional information needed to process the complaint;
3. The complainant cannot be located after reasonable attempts;
4. There is no statutory or alleged basis for the complaint, or the complainant does not allege any harm with regard to current programs or statutes;
5. The complaint has been investigated by another agency and the resolution of the complaint meets USDOT/FHWA regulatory standards; e.g., all allegations were investigated, appropriate legal standards were applied, and any remedies secured meet USDOT's standards;
6. Credible information found at any time indicating that the allegations raised by the complainant have been resolved, or are moot and there are no class-wide allegations or implications;
7. The same complaint allegations have been filed with another Federal, State, or local agency possessing statutory authority to accept and process such complaints;
8. The complainant has filed a legal action in Federal District Court with the same basis(es) and issue(s) involved in the complaint.

J. Resolution of Complaint

1. It is in the best interest of all parties involved that issues raised in a complaint of discrimination be resolved informally. Every effort will be made to pursue resolution of the complaint, even while the investigation is underway.
2. Based on the investigation and the analysis of information and evidence gathered, specific recommendations or a formal corrective action plan may be generated.
3. Complainants will be advised of their right to file their grievances with other governmental agencies possessing the statutory authority to accept and process such complaints; (such as the appropriate Federal agencies, including but not limited to FHWA and DOJ).

K. Letters of Finding (LOFs)

1. DelDOT ADA Title II Coordinator will attempt to mediate/resolve all ADA Title II/Section 504 complaints.
2. When the ADA Title II Coordinator is unable to mediate a resolution of the complaint, the ADA Title II Coordinator will arrange a meeting with the complainant and their authorized representative(s), if applicable. If the complaint involves additional agencies/entities, the ADA Title II/Section 504 Coordinator will attempt to coordinate the meeting to include participation of an official representative from all parties involved.
3. DelDOT must answer the complaint in writing within 15 working days of the meeting unless circumstances arise that requires reasonable extensions.

L. Appeals

If the complainant wishes to appeal the ADA Title II Coordinator's determination, the complaint can be submitted to the U.S. Department of Justice, Disability Rights Section, ADA Mediation Program. The ADA Mediation Program will follow its established complaint resolution and appeal processes as are appropriate for each specific complaint.

The complete Delaware Department of Transportation External Equal Opportunity Complaint Procedure can be viewed at: <http://regulations.delaware.gov/AdminCode/title2/2000/2500/2501.pdf> .