ADA/ADAAA GRIEVANCE PROCEDURE

Number 10.2

Effective Date: October 27, 2014

Supersedes: Policy 10.2, dated April 22, 2005
Policy 10.2, dated March 1, 1996

Subject: AMERICANS WITH DISABILITIES ACT (ADA)/ADA AMENDMENTS ACT (ADAAA) GRIEVANCE PROCEDURE

Applicable to: All classified, exempt, appointed, and temporary employees, as well as, applicants for employment with the Executive Branch of the State of Vermont. This Grievance procedure is also applicable to members of the public.

Issued By: Department of Human Resources

Approved By: Jeb Spaulding, Secretary of Administration

PURPOSE AND POLICY STATEMENT

The following grievance procedure is established to meet the requirements of the Americans with Disabilities Act (ADA) and/or the ADA Amendments Act (ADAAA). It is intended to provide prompt and equitable resolution of complaints alleging any violation of the ADA/ADAAA by a department, agency, or instrumentality of the Executive Branch of the government of the State of Vermont by reason of employment practices and policies or the provision of services, activities, programs, and benefits. This Grievance Procedure is available to State employees, applicants for employment with the Executive Branch of the State of Vermont, and to the public.

GRIEVANCE PROCEDURE

1. The complaint should be in writing and contain the name, address and phone number of the complainant and the location, date, and description of conduct or circumstances from which the violation is alleged to arise. Alternative means of filing complaints, such as personal interviews or a tape recording of the complaint will be made available for persons with disabilities upon request.

2. Depending upon the nature of the issue of concern, the complaint should be submitted, as soon as possible, but no later than sixty (60) calendar days after the complainant becomes aware of the alleged violation, to one of the individuals

identified in Attachment A. These individuals are hereby designated to coordinate ADA compliance on behalf of the Executive Branch.

3. Upon receipt of the complaint, the state representative shall refer the matter to an official ("the official"), generally the Appointing Authority of the affected agency, department or instrumentality, and shall notify the complainant of the referral. "Appointing Authority" is the person authorized by statute, or lawfully delegated authority, to appoint and dismiss employees.

4. Within fifteen (15) calendar days after filing of the complaint, the official (or his or her designee) will communicate with the complainant and discuss possible resolutions ("the conference").

5. Within fifteen (15) calendar days after the conference, the official will respond in writing to the complaint. Upon request, the response will be made available in a format accessible to the complainant, such as large print, Braille, or audio tape. The response will explain the position of the State of Vermont and offer options which the State deems appropriate for substantive resolution of the complaint. If the response by the official does not satisfactorily resolve the issue, the complainant may appeal the decision of the official within fifteen (15) calendar days after receipt of the response to the Secretary of the Agency of Administration at the following address:

   Secretary of Administration
   Vermont Agency of Administration
   109 State Street
   Montpelier, VT 05609-0201
   Phone: (802) 828-3322 FAX: (802) 828-2428 TDD: (802) 828-3342

6. Within thirty (30) calendar days after receipt of the appeal, the Secretary of the Agency of Administration or his or her designee will review the complaint, conduct further investigation or a meeting with the complainant, (s)he may deem appropriate, and respond in writing with a final decision regarding the complaint. Upon request, the response will be made available in a format accessible to the complainant, such as large print, Braille, or audio tape.

7. All complaints filed, appeals to the Secretary of Administration, and responses from the official and Secretary of Administration or his or her designee will be kept by the Executive Branch for not less than three (3) years from the date of filing of the complaint.

SPECIAL PROCEDURES

Following are special procedures for State employees and persons deemed to be State employees with respect to employment-related complaints.

The Collective Bargaining Agreements ("CBAs") between the State of Vermont and the Unions representing certain State employees articulate that State employees are protected from discrimination, intimidation and harassment because of their disability or other factor for which discrimination is prohibited by law. The CBAs give employees the right to file a grievance in accordance with the applicable grievance procedure if they believe that the contractual provisions have been violated. Employees who are covered by such agreements who believe that the actions of the State of Vermont as the employer have violated their rights under the ADA/ADAAA have the right to pursue such a claim through that same contractual grievance procedure in accordance with the terms thereof. However, if the employee seeks to pursue a grievance over a decision of the State's Reasonable Accommodation Committee, such grievance must be filed with the Vermont Labor Relations Board within thirty (30) calendar days of receipt of the decision of the committee or the matter shall be considered closed.

Persons who are not State employees as defined in 3 VSA § 902 (5), but who work for the State of Vermont in a managerial, confidential, exempt, temporary or other capacity, are deemed to be State employees under 3 VSA § 902 (4), only to the extent that they have the right to file, in accordance with the terms of the contractual grievance procedures, a grievance claiming that the actions of the State of Vermont as their employer violated their rights under the ADA/ADAAA. Such a grievance may be pursued up to, but not beyond, the Step III level.

Nothing in this grievance procedure will toll any statute of limitations under local, State, or federal law.

ATTACHMENT A

Notice of Provision of Services Under the Americans with Disabilities Act (ADA) and/or the ADA Amendments Act (ADAAA)

In accordance with the requirements of Title II of the Americans with Disabilities Act of 1990 ("ADA") as amended by the ADA Amendments Act of 2008 ("ADAAA"), the State of Vermont will not discriminate against qualified individuals with disabilities on the basis of disability in its services, programs, or activities.

Employment: The State of Vermont does not discriminate on the basis of disability in its hiring or employment practices and complies with all requirements promulgated by the U.S. Equal Employment Opportunity Commission under Title I of the ADA/ADAAA.

Effective Communication: The State of Vermont will generally, upon request, provide appropriate aids and services leading to effective communication for qualified persons with disabilities so they can participate equally in the State of Vermont's programs, services, and activities, including qualified sign language interpreters, documents in Braille, and other ways of making information and communications accessible to people who have speech, hearing, or vision impairments.

Modifications to Policies and Procedures: The State of Vermont will make all reasonable modifications to policies and programs to ensure that people with disabilities have an equal opportunity to enjoy all of its programs, services, and activities. For example, individuals with service animals are welcomed in all State of Vermont offices, even where pets are generally prohibited.

Anyone who requires an auxiliary aid or service for effective communication, or a modification of policies or procedures to participate in a program, service, or activity of the State of Vermont, should contact the office of the Title II State of Vermont ADA/ADAAA Coordinator (contact information listed below) as soon as possible but no later than 48 hours before the scheduled event.

The State of Vermont will not place a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the cost of providing auxiliary aids/services of reasonable modifications of policy, such as retrieving items from location that are open to the public but are not accessible to persons who use wheelchairs.

ADA/ADAAA Grievance Procedure Contacts

Title I Grievances (employment, hiring practices):

John J. Berard
Director of Labor Relations
Department of Human Resources
110 State Street
Montpelier, VT 05620-3001
802-828-3454
john.berard@state.vt.us

Title II Grievances (services, programs, activities):

David Sagi
ADA Program Manager
VocRehab Vermont AHS DAIL
18 Marolin Street
Rutland, VT 05701
802-595-2997
david.sagi@state.vt.us

General Accessibility Inquiries:

Julie O'Tool Gutgsell
Operations Chief of Properties and Facilities
Department of Buildings and General Services
2 Governor Aiken Drive
Montpelier, VT 05633-5801
802-828-0588
julie.otoolgutgsell@state.vt.us

Note: The ADA/ADAA does not require the State of Vermont to take any action that would fundamentally alter the nature of its programs or services, or impose an undue financial or administrative burden.