

AGENDA ITEM 11.

PROPOSED RULES

Submitted for: Information

Summary: This item reports on the agency's proposed rules for the Americans with Disabilities Act Grievance Procedure, the text of which is expected to be published in the **Illinois Register** on September 24, 2004. Federal Regulations at 28 CFR 35.107 require all agencies of State government employing at least 50 persons to publish rules governing the grievance procedure under the federal Americans with Disabilities Act. The procedure set forth in these proposed rules provides for the submission and review of a complaint under the ADA by an individual with a disability who meets the eligibility requirements for participation in or receipt of the benefits of a program, activity or service offered by ISAC and believes he or she has been excluded from participation in, or denied the benefits of, any program, service or activity of ISAC or has been subject to discrimination by ISAC.

Initial publication of the proposed rules will trigger a 45-day public comment period that is expected to end on November 5, 2004. At its November meeting, the Commission will be presented with revised proposed rules, as modified in response to public comment. Following approval by the Commission, the Executive Director will authorize staff to initiate the second 45-day review period by submitting the proposed rules to the Joint Committee on Administrative Rules (JCAR), the legislative support services agency responsible for reviewing all rulemaking action of state agencies. JCAR is expected to review the proposed rules at its December meeting.

After the JCAR review, the proposed rules will be brought to the Commission for final adoption in January, 2005. It is anticipated that these rules will become effective in early February, 2005. The full text of the proposed rules is included in this item.

Following approval and adoption of these rules by the Commission, the Executive Director will authorize staff to submit them to the Administrative Code Division of the Secretary of State for publication as final adopted rules. Once adopted, they will be communicated to ISAC's clients through publication in the **Illinois Register** and various client communications, as well as being posted to ISAC's Web site.

Action requested: None

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TITLE 4: DISCRIMINATION PROCEDURES
CHAPTER XLVI: ILLINOIS STUDENT ASSISTANCE COMMISSION

PART 1400
AMERICANS WITH DISABILITIES ACT GRIEVANCE PROCEDURE

Section

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AUTHORITY: Implementing the Americans With Disabilities Act of 1990 (42 USC 12101 et seq.) and authorized by Section 20(g) of the Higher Education Student Assistance Act [110 ILCS 947/20(g)].

SOURCE: Adopted at 28 Ill. Reg. _____, effective _____.

Section 1400.10 Purposes

- a) This grievance procedure is established pursuant to the Americans With Disabilities Act of 1990 (42 USC 12101 et seq.) (ADA) and specifically Section 35.107 of the Title II regulations, 28 CFR 35, requiring that a grievance procedure be established to resolve grievances asserted by qualified individuals with disabilities. Should any individual desire to review the ADA or its regulations to understand the rights, privileges and remedies afforded by it, please contact the Designated Coordinator.
- b) In general, the ADA requires that each program, service and activity offered by the Illinois Student Assistance Commission (ISAC), when viewed in its entirety, be readily accessible to and usable by qualified individuals with disabilities.
- c) It is the intention of ISAC to foster open communication with all individuals requesting readily accessible programs, services and activities. ISAC encourages supervisors of programs, services and activities to respond to requests for modifications before they become grievances.

Section 1400.20 Definitions

"Act" or "ADA" means the Americans With Disabilities Act of 1990 (42 USC 12101 et seq.).

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"Complainant" is an individual with a disability who files a Grievance Form provided by ISAC under this procedure.

"Designated Coordinator" is the person designated by ISAC to be responsible for the coordination of efforts of ISAC to comply with and carry out its responsibilities under Title II of the ADA, including investigation of grievances filed by complainants. The Designated Coordinator may be contacted at Office of the General Counsel, Illinois Student Assistance Commission, 1755 Lake Cook Road, Deerfield, IL 60015. (See 28 CFR 35.107.)

"Disabilities" shall have the same meaning as set forth in the Americans With Disabilities Act.

"Executive Director" means the Executive Director of ISAC.

"Grievance" is any complaint under the ADA that is reduced to writing by an individual with a disability who meets the essential eligibility requirements for participation in or receipt of the benefits of a program, activity or service offered by ISAC and believes he or she has been excluded from participation in, or denied the benefits of, any program, service or activity of ISAC or has been subject to discrimination by ISAC.

"Grievance Form" is prescribed for the purpose of filing a grievance under this Part and includes information such as name, address, phone number, nature of the grievance, with specificity, including date of incident, time, place and witnesses if applicable.

"Qualified individual with a disability" means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by ISAC.

Section 1400.30 Procedure

- a) Grievances must be submitted in accordance with procedures established in Sections 1400.40 and 1400.50 of this Part. It is mutually desirable and beneficial that grievances be satisfactorily resolved in a prompt manner. Time limits established in this procedure are in calendar days, unless otherwise stated, and may be extended by mutual agreement, in writing, by the complainant and the reviewer, at the Designated Coordinator and/or the Final Levels described in Section 1400.50.
- b) A complainant's failure to submit a grievance, or to submit or appeal it to the next level of procedure within the specified time limits, shall mean that the complainant has withdrawn the grievance or has accepted the last response from ISAC given in the grievance procedure.
- c) ISAC shall, upon being informed of individual's desire to file a formal grievance, instruct the

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individual how to receive a copy of this procedure and the Grievance Form.

Section 1400.40 Designated Coordinator Level

- a) If an individual desires to file a grievance, the individual shall promptly, but no later than 180 days after the alleged discrimination, submit the grievance to the Designated Coordinator in writing on the Grievance Form prescribed for that purpose. The Grievance Form must be completed in full in order to receive proper consideration by the Designated Coordinator.
- b) Upon request, assistance in completing the Grievance Form shall be provided by ISAC.
- c) The Designated Coordinator, or his/her representative, shall investigate the grievance and, if the grievance is found to be valid, shall make reasonable efforts to resolve it. The Designated Coordinator shall provide a written response to the complainant and Executive Director within 15 business days after receipt of the Grievance Form.

Section 1400.50 Final Level

- a) If the grievance is not resolved at the Designated Coordinator Level to the satisfaction of the complainant, the complainant may submit a copy of the Grievance Form and Designated Coordinator's response to the Executive Director for final review. The complainant shall submit these documents to the Executive Director, together with a short written statement explaining the reasons for dissatisfaction with the Designated Coordinator's written response, within 15 business days after receipt by the complainant of the Designated Coordinator's response.
- b) Within 15 business days, the Executive Director shall appoint a three-member panel to review the grievance at the Final Level. One member shall be designated chairman. The panel shall schedule a review of the grievance, which shall commence no later than 15 business days after the last member of the panel is appointed.
- c) Complainant shall be afforded an opportunity to appear before the panel. Complainant shall have a right to appoint a representative to appear on his or her behalf. The panel shall review the Designated Coordinator's written response and may conduct interviews and seek advice as it deems appropriate.
- d) Upon agreement of at least two of the panel members, but not later than 15 business days after the review described in subsection (b), the panel shall make recommendations in writing to the Executive Director as to the proper resolution of the grievance. All recommendations shall include reasons for such recommendations and shall bear the signatures of the concurring panel members. A dissenting member of the panel may make a recommendation to the Executive Director in writing and shall sign the recommendation.

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- e) Within 15 business days after receipt of recommendations from a panel, the Executive Director or designee shall approve, disapprove or modify the panel recommendations; shall render a decision on those recommendations in writing; shall state the basis for his or decision; and shall cause a copy of the decision to be served on the parties. The Executive Director's decision shall be final. If the Executive Director disapproves or modifies the panel's recommendations, the Executive Director may include written reasons for such disapproval or modification.
- f) The Grievance Form, the Designated Coordinator's response, the statement of the reasons for dissatisfaction, the recommendations of the panel, and the decision of the Executive Director shall be maintained in accordance with the State Records Act [5 ILCS 160] or as otherwise required by law.

Section 1400.60 Accessibility

ISAC shall ensure that all stages of the grievance procedure are readily accessible to and usable by individuals with disabilities.

Section 1400.70 Case-By-Case Resolution

Each grievance involves a unique set of factors that includes but is not limited to: the specific nature of the disability; the essential eligibility requirements, the benefits to be derived, and the nature of the service, program or activity at issue; the health and safety of others; and whether an accommodation would constitute a fundamental alteration to the program, service or activity or undue hardship on ISAC. Accordingly, termination of a grievance at any level, whether through the granting of relief or otherwise, shall not constitute a precedent on which any other complainants should rely.