

## **Step 5: Adopt a Policy Statement About Your Organization's Commitment to Accessibility and Establish a Grievance Procedure**

### **Guidance on Access Policies**

#### **Best Practices: Policy Statements That Include Access Language**

#### **504/ADA Grievances and Formal Complaints**

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#### **Best Practices: Sample Grievance Procedures**

### **Guidance On Access Policies**

Experience has shown that when access to services, programs, activities and employment are given a high priority, it is reflected in an organization's **mission statement, policies and guidelines**.

Having an access policy in place demonstrates that your organization is making a "good faith effort" to comply with Section 504 and the Americans with Disabilities Act regulations.

People with disabilities and older adults have a legal right to equal access to programs, services and facilities. **Access policies should have "teeth," stating that your organization and its constituents must comply with the laws.** Grant making organizations should have access policies to enforce the laws and to use as a review criterion for funding.

Access policies should include **how electronic or information technology will be usable by individuals with disabilities**.

A successful method for developing effective access policies is to **work with your Access Advisory Committee** before submitting them for full board approval.

Access policies should be implemented as part of your overall access plan. **Your organization should be ensuring access, and be prepared to provide access accommodations prior to publicizing its accessibility.**

**An effective and comprehensive accessibility policy should include a standard grievance procedure** for resolving 504/ADA grievances and formal complaints. Organizational staff should be knowledgeable of accessibility policies and be prepared to address any grievances in an appropriate and efficient manner.

## **Best Practices: Policy Statements That Include Access Language**

### **Cultural Participation and Vision Statement**

**APPROVED RESOLUTION  
THE NATIONAL COUNCIL ON THE ARTS  
February 7, 1988**

The National Council on the Arts believes that the arts are essential to leading a full and productive life, and reaffirms its support for making the arts available to all people, including those with physical and mental disabilities. Therefore, the Endowment should continue to exercise leadership in enhancing opportunities for full participation in the arts by people with disabilities people and assure their needs are taken into account in all elements of the operations of the Endowment, its grantees, and sub-grantees.

## National Assembly of State Arts Agencies (NASAA)

NASAA works to ensure that accessibility issues are a critical component of state arts agency planning, and that SAA goals should include making all of the arts available to all of the people. Of particular importance is reaching previously underserved audiences such as individuals with disabilities, people in institutions, including those who are incarcerated, older Americans, and those who are economically disadvantaged.

Enabling everyone to both observe and participate in the artistic experience will result in a broadened understanding and commitment to the arts, and an increasing awareness of the value of the arts in shaping who we are and what we can become, as individuals and as a nation.

The National Assembly of State Arts Agencies (NASAA) believes the arts are central to the educational, economic and cultural well being of our society. Such a society values the unique capacities of individuals, the diversity of the cultural groups to which they belong and the communities in which they live. NASAA sees itself as a leader and catalyst in building increased support for and access to the arts\*

\*From NASAA's Vision Statement

## Ohio Arts Council

### Cultural Participation Policy

Legal Requirements and Ohio Arts Council Rules (n. d.) Retrieved October 26, 2003 from [http://www.oac.state.oh.us/grantsprogs/guidelines/guide\\_legal.asp#culture](http://www.oac.state.oh.us/grantsprogs/guidelines/guide_legal.asp#culture)

Ohio benefits from a rich heritage of many cultural groups that provide a wealth of arts resources. The Ohio Arts Council requires efforts by applicants to make programs, facilities and volunteer opportunities accessible to everyone in the community. Our application forms allow you to describe the diverse composition of those served by your programs and involved in the executive, administrative and volunteer operations of your organization. The Ohio Arts Council has adopted the following policy to help arts organizations define and better serve their communities.

**Individuals and organizations in two basic groups need special attention. They are:**

*Specific Populations*, which include:

- African Americans
- Appalachians
- Asians
- Latinos and Hispanics
- Native American Indians
- People with Disabilities
- Seniors aged 62 and older

*Under-served People*, who are:

Potential arts participants who are not currently served. For example, these groups might be identified by your organization as members of European ethnic groups, rural residents, youth, unemployed people or others.

### **What Are the Benefits of Reaching Members of These Groups?**

- Reassessing your organization's sense of its community and clarifying your mission.
- Strengthening your organization's relationship to the community.
- Building partnerships between arts and community groups and encouraging collaborations.

- Utilizing previously unknown or underused resources.
- Expanding programming opportunities and encouraging cultural exchanges.
- Building audiences.

### **How Can These Groups Be Included?**

Individuals from the two groups—specific populations and under-served people—should be included in the programming and planning of your organization. They can serve as members of special advisory committees or task forces; as contributing editors, guest curators and artists; as members of your governing body or board; and as full- or part-time staff.

The Ohio Arts Council is committed to the broadest possible range of participation in the arts. It has adopted this policy of cultural participation to be used in evaluating grant proposals. The OAC expects to see broad interests reflected in the governing of arts organizations and in their program planning, as well as a commitment by organizations to serve the widest possible range of Ohio citizens.

If you would like further information or assistance in developing your own cultural participation policy, contact the Building Diverse Audiences coordinator at the Ohio Arts Council.

## **Non-Discrimination Policies and Assurances of Compliance**

### **Wisconsin Arts Boards Artistic Program Support II, 2001**

#### **Organization Assurances Form**

The grant applicant is required to sign the form assuring that:

The Applicant HEREBY ASSURES THAT

- 1) A. It will comply with Title VI of the Civil Right Acts of 1964 (42 U.S.C. 2000d et seq.); Section 504 of the Rehabilitation Act of 1973 (229 U.S.C. 799u); the Americans with Disabilities Act of 1990; the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.) where applicable; Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.) and all regulations of the National Endowment for the Arts. Title VI, Section 504 and Title IX prohibit discrimination on the basis of age, race, color, national origin, disability or sex in any program or activity receiving federal assistance. The Applicant HEREBY GIVES ASSURANCE that it immediately will take any measures necessary to comply.

Wisconsin Arts Board's Artistic Program Support II Application also requires applicant to make note of what aspects of a facility are accessible to people with disabilities, i.e. parking, entrance, washrooms, level access, etc.

### **Kentucky Arts Council**

The KAC Grants Agreement Form (2002-2003), contains an assurance that all applicants must agree to. It states that the applicants must:

Assures that no person shall, on the grounds of race, color, religion, national origin, sex or disability, while otherwise qualified, be excluded from participation in, be denied benefits of, or by otherwise subjected to discrimination under any program or activity including employment supported in whole or in part by funds provided hereunder.

## Ohio Arts Council

### Nondiscrimination Policy

The Ohio Arts Council's intent to operate in accordance with the nondiscriminatory requirements pursuant to Title VI of the Civil Rights Act of 1964, Section 504 of Rehabilitation Act of 1973 as amended and the Age discrimination Act of 1975, the Americans with disabilities Act of 1990, and where applicable, the Omnibus Budget Reconciliation Act of 1981. No individual shall on the grounds of race, color, national origin, handicap, age, sex or religion, be excluded from participation in, be denied benefits of or be otherwise subjected to discrimination under any program, service or benefit advocated, authorized by the State of Ohio.

### Accessibility Policy

People with disabilities have the right to access our programs. All services and facilities of organizations that receive OAC funding should be provided in a way that best suits individuals' needs. Here are important parts of the federal law known as the American with Disabilities Act: No individual shall be denied the full and equal enjoyment of services, facilities, privileges, advantages and accommodations of any public place on the basis of disability. This rule applies to owners, operators and those who lease any place of public accommodation.

The law prohibits:

- Imposing eligibility criteria to screen out individuals with disabilities.
- Failing to make reasonable changes in policies, practices and procedures that affect access for people with disabilities.
- Failing to take steps necessary to ensure that no individual with a disability is excluded, denied services, segregated or treated differently from other individuals.

Failing to remove architectural and other barriers: aisles must accommodate wheelchairs; stairs must be ramped; telephones should be within easy reach; elevator controls should be marked in Braille.

Legal Requirements and Ohio Arts Council Rules (n. d.) Retrieved October 26, 2003 from [http://www.oac.state.oh.us/grantsprogs/guidelines/guide\\_legal.asp#nondisc](http://www.oac.state.oh.us/grantsprogs/guidelines/guide_legal.asp#nondisc)

## New Hampshire State Council on the Arts

### Grant Information for All Applicants

#### Making Your Programs and Services Accessible

(last updated September 11, 2003)

<http://www.state.nh.us/nharts/grantsandservices/accessible.htm>

The New Hampshire State Council on the Arts supports universal access to the arts. The Council abides by state and federal laws that prohibit public support to organizations (people or entities) that discriminate against people with disabilities. Therefore, each grantee is required to assure that they are in compliance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 (ADA).

#### Your Obligation a Grantee

By signing a State Arts Council application or grant agreement, grantees are in effect acknowledging that their programs, services, and facilities are accessible, or a plan to make them accessible is in place and being followed. Section # 6 of the grant application must be completed as a prerequisite for the State Arts Council to consider funding an organization. Funds will not be granted unless applicants are able, if requested, to provide documentation of their efforts to be in compliance. The State Arts Council expects every arts organization to have assigned a staff person, board member, or other volunteer the responsibility of being the organization's 504/ADA Compliance Coordinator to ensure that every reasonable effort has been extended to make the arts accessible to everyone.

#### In addition, the State Arts Council expects to see:

- Evidence of inclusive programming policies, e.g., outreach activities.
- Affordable admissions, ADA compliance, culturally diverse programming.
- Evidence of audience development planning.
- Efforts to make the arts accessible to special constituencies.
- Community support and need.
- Efforts to broaden audience appreciation of new or unfamiliar work.

#### How to Get More Information

The State Arts Council has a collection of material to help you with your accessibility efforts. Don't hesitate to call for more information on what is available in the form of videos, notebooks, books, and grants. For more information contact The State Arts



Council's 504/ADA Coordinator <http://www.state.nh.us/nharts>.

Information is also available through the ADA hotline at 1-800-949-4232 voice/TDD and/or the National Endowment for the Arts Office for Special Constituencies (202-682-5532 voice or 202-682-5496 TDD) for additional information and assistance with accessibility as it relates to the arts and Section 504.

The State Arts Council strongly encourages all arts organizations in the state to foster integration for individuals of all ages and abilities, whether audience members or artists, in all of their arts programs. The following symbols represent some ways to integrate people with disabilities into your own programs.



## Access Language in Grants and Applications

### **Colorado Council on the Arts**

CCA's 2003 Grants to Artists and Organizations, states under "Other Conditions of Funding" that:

Section 504 of the Rehabilitation Act of 1973 and the American with Disabilities Act of 1990 prohibit discrimination against persons with disabilities. Organizations receiving CCA funding must have an access plan approved by VSA Arts Colorado, outlining changes anticipated in programs, services and physical structure to allow accessibility to activities and facilities by persons with disabilities. Artist receiving funding must ensure that facilities used for public presentations will be accessible to people with disabilities. Questions about these requirements may be directed to VSA Colorado at (303)777-0797. Grant applicants must also sign an assurance form stating that they are in complete compliance with the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973.

## Massachusetts Cultural Council

**Massachusetts Cultural Council** (MCC) outlines its access policy in their 2003 *Organizational Support Guidelines* under a section entitled “Legal and Other Requirements.”

### **Access Policy**

The MCC encourages applicants from all segments of the state’s communities in order to encourage diversity in the cultural life of the Commonwealth. In accordance with state law, Massachusetts cultural organizations may not discriminate in their programs or in staff and board membership in the basis of race, gender, religion, creed, color national origin, disability, sexual orientation or age.

The MCC is committed to access not only as a matter of state and federal law, but also as a policy designed to encourage the participation of all segments of the Commonwealth’s population in MCC-funded programs. The Massachusetts Office of Affirmative Action currently designates the following as underserved: African Americans, Asian Americans, Latin Americans, Native Americans, people with disabilities, Vietnam-era veterans and women. The MCC also considers low-income communities, rural populations and citizens over 65 years old as underserved populations.

Organizations funded by the MCC and/or by local cultural councils that present public programs and/or offer services to the public must make reasonable accommodations to insure that people with disabilities have equal physical and communications access, as defined by federal law. Accessibility involves both the location (the facility) and the content (the activity or product) of the program.

## Accommodation Policies

### **Kentucky Humanities Council**

**Kentucky Humanities Council, Inc.  
206 East Maxwell Street  
Lexington, KY 40508**

**Phone:** (859) 257-5932; **Fax:** (859) 257-5933  
**E-Mail:** [Smith@kyhumanities.org](mailto:Smith@kyhumanities.org)

This agency is committed to providing accessibility to individuals with disabilities.  
If you are in need of an accommodation, please contact our office.

(Retrieved August 9, 2003 from, <http://www.kyhumanities.org/keyingredients.html>)

### **Maryland Arts Council**

#### **TYPES OF ACCESS REQUIRED**

#### **2. Project Funding**

An organization receiving MSAC PROJECT FUNDING must also provide persons with disabilities access to the funded activities to the extent that they are available to the general public. The most reliable way of achieving this is for an organization to provide accessible facilities for all public performances or displays of the funded project. Where all facilities are not accessible, it may be possible to provide program access through alternative measures. For example:

- An organization presenting an exhibit on an inaccessible level of a historic building may provide an overview of the collection as well as representative and any requested pieces of the collection in an accessible room of the building. This places a significant administrative responsibility on the exhibit staff to quickly respond to request of visitors with disabilities.
- An organization presenting a play or vocal concert may choose not to sign language interpret every performance, but could instead provide and widely publicize a limited schedule of sign language interpreted performances of the play.

## Electronic and Information Technology Policies

### Michigan State

**Michigan State's** governmental Web site, where the Michigan Council for Arts and Cultural Affairs can be found contains the following Accessibility Policy Statement (© 2001-2003):

Michigan recognizes the importance of making its digital government services available to the largest possible audience and has attempted to design the Michigan.gov Web site to be accessible by everyone. This Web site was coded to comply with both the Americans with Disabilities Act and the Priority 1 Level Checkpoints of the World Wide Web Consortium (W3C) Web Content Accessibility Guidelines 1.0.

Along with Priority 1 Compliance, efforts have been made to ensure compatibility with common technologies utilized by the adaptive community. This site has been tested for compliance with Zoom Text for image magnification, Jaws for Windows screen reader for speech synthesis and Lynx for web browsing.

Michigan will continue to test future releases of this site and remains committed to maintaining its compliance and serving the widest possible audience for Michigan's digital government services.

## Tennessee State

### Accessibility Statement

(Retrieved February 9, 2004 from

<http://www.Tennesseeanytime.org/tnanytime/accessibility.html>)

Accessible Web design provides benefits to both those using assistive technology, as well as others. It provides benefit to users with text-based browsers, low-end processors, slow modem connections, or users who do not have state-of-the-art computer equipment. It also allows for easier access to the Internet via technologies such as internet-enabled phones or personal digital assistants.

Tennessee executive branch agency Web sites are subject to the same accessible Web standards as federal agencies. Section 508 of the Federal Register establishes requirements for federal electronic and information technology, and the federal Access Board has issued the standards to meet those requirements.

We are committed to making Tennessee.gov accessible to all users and we have included several features designed to improve accessibility for all users. We welcome comments on how to improve the site's accessibility for users with disabilities.

**See also:** Step 2: Best Practices: Sample Employment Policies  
Step 9: Enforce 504/ADA Compliance within Your Organization

### **504/ADA Grievances and Formal Complaints**

Included within your policies and other plans for accessibility there needs to be an established process whereby an individual may communicate a grievance or a formal complaint. Honest good faith efforts to comply with access laws through good accessibility practices maximize the opportunity for compliance and minimize the risk.

### **Definitions of Grievances and Formal Complaints**

According to the National Endowment for the Arts:

- A **grievance** is an informal, verbal complaint.
- A **formal complaint** is a written complaint, filed with the appropriate agency.

### **Develop a Report That Clearly States What Your Agency is Doing to Increase Access**

**This report should clearly explain what your organization has accomplished and is doing to increase access to facilities, programs and services, and who to contact with complaints or grievances, etc.; this information may be included in your policies and plans.** The report may include a complete listing of access accommodations and services offered, access self-evaluation, access transition plan, documentation of steps taken to make any needed improvements or remove barriers, documentation of the involvement of people with disabilities (such as minutes from an advisory committee), access education efforts with staff and constituents, access language in grant application guidelines and other publications and notices or communications to potential participants with disabilities.

If non-compliance is alleged, a Civil Rights Office or other mediating Agency will look for "good faith" compliance with Section 504 and/or ADA Regulations and gestures of "reasonable accommodation" toward constituents with disabilities; this report will help inform the public concerning your access efforts and assist in making these determinations.

### **Establish a Standard Grievance Procedure for Resolving 504/ADA Grievances and Formal Complaints**

A grievance procedure is an established formal or informal system within a cultural organization that identifies responsible staff persons, defines responsibilities, sets forth a clearly identified procedure, establishes criteria for judgment, describes hearing procedures and sets time limits for resolution of differences between the organization and its staff or its users. It is a particularly useful technique for settling local or in-house differences, without resorting to outside intervention and invoking federal complaint mechanisms.

A grievance procedure is required of state and local governmental arts and humanities entities 28 CFR Sec. 35.107 (b). Similarly, alternative dispute resolution mechanisms, which may include a grievance process, are encouraged under Title III of ADA 28 CFR Sec. 36.350. Realize that use of the grievance process is neither a prerequisite for nor a preclusion of the pursuit of alternative forums or filing of a formal complaint.

### **Resolving Grievances (Informal, Verbal Complaints)**

Most informal (verbal) grievances may be resolved by working with the cultural organization and the complainant to determine and correct any access deficiencies. Complaints are sometimes about how a person was treated (i.e., a service or employment issue) rather than an issue of an inaccessible facility.

The agency should make every effort to resolve a grievance before it becomes formal (written) complaint, through mediation and providing any needed technical assistance and resources to the grantee. This timely action will not only save money, but the many

hours of staff time required to resolve formal complaints. In addition, there is often unfavorable publicity associated with formal complaints.

For example, if it is informally determined that the cultural organization is not in compliance, provide the organization with any needed technical assistance and/or facilitate contact with an appropriate person or organization that may help make improvements. Follow-up and frequent contact with both parties is important until the grievance is resolved.

A standard procedure should be followed to resolve the matter, and documented in writing.

Agency staff should be prepared to process the grievance, and to take appropriate actions. This includes familiarity with state requirements and officials if the complaint should become formal.

The arts or humanities organization should clearly define and publish their agency's jurisdictional limits and resources.

**Most important, develop partnerships with non-arts agencies to process complaints; many state or local government agencies provide counsel, mediation, or technical assistance free of charge.** For example your organization may work with the state or Mayor's office for Persons with Disabilities.

**Example:** When the Illinois Arts Council receives a grievance or formal complaint, the IAC refers the complainant to the Department of Human Rights (DHR), Division of Public Accommodations. If the DHR determines that a violation of the ADA has occurred and the respondent is an IAC grant recipient, the Council will initiate procedures to negate the grant and recover any funds that have been dispersed.

**Example:** Michigan Council for Arts and Cultural Affairs has an agreement with the Michigan Department of Civil Rights (MDCR) to resolve grievances. Staff from the MDCR review files, consider additional information either party submits and offers assistance in resolving differences in an effort to secure voluntary compliance. Whenever an amicable resolution cannot be achieved, the MDCR issues a written staff determination to the Arts Council; thereafter, either party may petition the MDCR for a hearing, which is provided in the rules of the Michigan Civil Rights Commission. In all cases, the Michigan Council for Arts and Cultural Affairs works to assist its grantees by investigating allegations of non-compliance, providing technical assistance, information, and workshops.



**Example:** The Ohio Arts Council has a partnership with the Ohio Civil Rights Commission to resolve complaints against its grantees. Their ADA Grievance Procedure states, "If anyone feels that an event or facility funded by the Ohio Arts Council is inaccessible to them, they are encouraged to file a complaint with the Ohio Civil Rights Commission, 1111 East Broad Street, 3<sup>rd</sup> Floor, Columbus, OH 43205; 1-888-278-7101." Once the complaint is verified, and if the organization is found to be in non-compliance by the OCRC, the OAC will then put a hold on any grant funds that organization may have from the OAC as well as withhold final decisions on any pending applications until that organization has addressed its non-compliance issues.

### **Resolving Formal Complaints (Written, Filed with Appropriate Agency)**

#### **Determining Which Regulations Apply to the Complaint**

Section 504 of the Rehabilitation Act of 1973 prohibits **recipients of federal funds** from discriminating on the basis of disability in their programs or services.

The Americans with Disabilities Act of 1990 (ADA), which became effective in 1992, prohibits discrimination on the basis of disability under **Title I** employment regulations (25 or more employees as of July 26, 1992; 15 or more employees as of July 26, 1994).

As of January 26, 1992, the ADA extended the requirements of Section 504 to:

1. All activities of state and local government under **Title II**; and
2. Places of public accommodation and commercial facilities operated by private entities, including places of "public display or collection" such as museums, under **Title III**.

Therefore:

1. Cultural groups operated by state or local governments are covered by **Title II**
2. Title III covers cultural groups operated by private entities, which do not receive federal funds. If the complaint falls under ADA, the grant-making agency technically may not be legally involved, but should have previously determined what its role will be in helping to settle the dispute, e.g., provide/suggest technical assistance, serve as mediator, direct the parties to the appropriate local, state or federal agency, etc.

2. Public accommodations that are also recipients of federal financial assistance must comply with the requirements of **both** Title III of the ADA **and** Section 504. If the formal complaint falls under Section 504, the state arts or humanities agency is legally involved, and must have a Grievance Procedure to follow in resolving the complaint. If all efforts to secure voluntary 504/ADA compliance fail, steps should be taken to enforce the law.

### **Complaint Procedures Relating to Section 504**

**Individuals, who believe that a recipient of federal financial assistance through the National Endowment for the Arts or Humanities has subjected them to discrimination, may file a formal complaint under Section 504 with the Arts Endowment's Office for Civil Rights.** If the recipient is a state or local government entity, the National Endowment for the Arts or National Endowment for the Humanities will consider the requirements of both Title II of the ADA and Section 504 in processing the complaint. Individuals may also file their complaints in court.

The enforcement procedures under Title II of the ADA are based on the Section 504 procedures. There are many equally effective ways to file a 504 complaint against any organization that receives federal financial support. Any citizen may file a 504 complaint, e.g., with the funding organization, the state arts or humanities agency, the National Endowment for the Humanities or the National Endowment for the Arts. However, it is best to file complaints with the Department of Justice for institutions that receive federal funding. The Department of Justice will refer the complaint to the appropriate agency. Many cultural organizations receive funding from the National Endowment for the Arts, National Endowment for the Humanities, and the US Department of Education, or the National Science Foundation.

When investigating and seeking to resolve a complaint, try to obtain as much information as possible. Seek specific information as to who did what to whom, where, when and how. Try to ascertain what the problem is, what solutions the complainant seeks, and what is feasible from the perspective of the arts or humanities provider. If you are unable to immediately resolve the matter, encourage alternative dispute resolution mechanisms, such as mediation.

If you need more information concerning 504 complaints filed with the National Endowment for the Arts, contact the NEA's Civil Rights Division at (202) 682-5454 (V) or (202) 682-5695 (TTY).

**See also:** [Section 504 of the Rehabilitation Act of 1973 Discrimination Complaint Form](http://www.usdoj.gov/crt/ada/t2cmpfrm.htm) (<http://www.usdoj.gov/crt/ada/t2cmpfrm.htm>),  
From the U.S. Department of Justice Web site.

## **Complaint Procedures Relating to the ADA**

**Complaints against state and local government entities may also be filed under Title II with the federal agency designated as the enforcement agency** for that government entity by the Department of Justice's regulation implementing Title II.

**Administrative complaints against places of public accommodation operated by private organizations may be filed with the Department of Justice, which enforces the ADA.** (If the organization **is also** a recipient of assistance from either the National Endowment from the Arts or National Endowment for the Humanities, a complaint may be filed under Section 504 with either of those agencies. In addition, under either Title II or Title III, a complainant may elect to file a private suit in court, without exhausting the administrative complaint procedures.

**Private individuals may bring lawsuits in which they can obtain court orders to stop discrimination.** Individuals may also file complaints with the Attorney General at the Department of Justice, who is authorized to bring lawsuits in cases of general public importance or where a "pattern of practice" of discrimination is alleged. In these cases, the Attorney General may seek monetary damages and civil penalties. Civil penalties may not exceed \$50,000 for a first violation or \$100,000 for any subsequent violation.

The ADA public accommodations provisions permit an individual to allege discrimination based on the reasonable belief of a person with a disability that discrimination **is about to occur**; the individual does not have to wait for the discrimination to occur. For example, a person who uses a wheelchair can challenge the planned construction of a new place of public accommodation, such as a performing arts facility, which would not be accessible to wheelchair users. The resolution of such a challenge **prior** to the construction of an inaccessible facility would enable any necessary remedial measures to be incorporated in the building at the planning stage, when such changes would be relatively inexpensive.

**Employment provisions of the ADA are enforced under the same procedures applicable to race, sex, national origin and religious discrimination under Title VII of the Civil Rights Act of 1964; complaints may be filed with the Equal Employment Opportunity Commission or designated State human rights agencies.**

1. Filing with the Equal Employment Opportunity Commission is required before a complaint can be filed in court under ADA Title I. This is different than the law under Title II, supra. Available remedies include hiring, reinstatement, back pay and court order to stop discrimination.
2. Damages are also an available remedy as a result of the Civil Rights Act of 1991. The maximum damage award is \$300,000.

3. Complaints under state laws may be filed in state court or with state agencies, as the state law (not federal) allows.

## **Best Practices: Sample Grievance Procedures**

### **Minnesota State Arts Board Internal Harassment/Discrimination Complaint Procedure**

The Minnesota State Arts Board has established the following discrimination complaint procedure to be used by all employees, applicants, or eligibles. Coercion, reprisal, or intimidation against anyone filing a complaint or serving as a witness under this procedure is prohibited.

#### **Responsibility of Employees**

All employees shall respond promptly to any and all requests by the Affirmative Action Officer designee for information and for access to data and records for the purpose of enabling the Affirmative Action Officer designee to carry out responsibilities under this complaint procedure.

#### **Who May File**

Any employee, applicant, or eligible of the Minnesota State Arts Board who believes that s/he has been discriminated against by reason of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, membership or activity in a local human rights commission, disability, sexual orientation, or age may file a complaint. Employees who are terminated are encouraged to file their internal complaint prior to their actual separation; however, complaints will be taken for a reasonable accommodation period of time subsequent to the actual separation date.

#### **The Complaint Procedure**

The internal complaint procedure provides a method for resolving complaints involving violations of the Minnesota State Arts Board's nondiscrimination policy within the agency. Employees, applicants, and eligibles are encouraged to use this internal complaint process. Retaliation against a person who has filed a complaint either internally or through an outside enforcement agency or other legal channels is prohibited. The Affirmative Action Officer designee may contact the Office of Diversity and Equal Opportunity if s/he wants information about filing a complaint.

#### **Filing Procedures**

1. The employee, applicant, or eligible completes the "Complaint of Discrimination Form" provided by the Affirmative Action Offer designee. Employees are encouraged to file a complaint within a reasonable period of time after the

individual becomes aware that a situation(s) may involve discriminatory harassment. The Affirmative Action Officer designee will, if requested, provide assistance in filling out the form.

2. The Affirmative Action Officer designee determines if the complaint falls under the purview of Equal Employment Opportunity law, i.e., the complaint is alleging discrimination or harassment on the basis of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, membership or activity in a local human rights commission, disability, sexual orientation, or age; or if the complaint is of a general personnel concern. The Affirmative Action Officer designee shall also discuss other options for resolutions, such as the Workplace Pilot Project.
  - a. If it is determined that the complaint is not related to discrimination but rather to general personnel concerns, the Affirmative Action Officer designee will inform the complainant, in writing, within ten (10) working days.
  - b. If the complaint is related to discrimination, the Affirmative Action Officer designee will, within ten (10) working days, contact all parties named as respondent(s) and outline the basic facts of the complaint. The respondent(s) will be asked to provide a reason to the allegations within a specific period of the time.
3. The Affirmative Action Officer designee shall then investigate the complaint. At the conclusion of the investigation, the Affirmative Action Officer designee shall notify the complainant(s) and respondent(s) that s/he has completed the investigation. The Affirmative Action Officer designee shall then review the findings of the investigations.
  - a. If there is sufficient evidence to substantiate the complaint, appropriate action will be taken.
  - b. If insufficient evidence exists to support the complaint, a letter will be sent to the complainant(s) and the respondent(s) dismissing the complaint.
4. A written answer will be provided to the parties within sixty (60) days after the complaint(s) is filed. The complainant(s) will be notified should extenuating circumstances prevent completion of the investigation within sixty (60) days.
5. Dispensation of the complaint will be filed with the Commissioner of the Department of Employee Relations within thirty (30) days of the final determination.
6. All documentation associated with a complaint shall be considered investigation data under the Minnesota Government Data Practices Act. The status of the complaint will be shared with the complainant(s) and respondent(s). After an

investigation is completed and all appeals are exhausted, all documentation is subject to the provisions of the Minnesota Government Data Practices Act.

7. All data collected may at some point become evidence in civil or criminal legal proceedings pursuant to state or federal statutes. An investigation may include, but is not limited to, the following types of data:
  - a. Interviews or written interrogatories with all parties involved in the complaint, e.g., complainant(s), respondent(s), and their respective witnesses; officials having pertinent records or files, etc.
  - b. All records pertaining to the case i.e., written, recorded, filmed, or in any other form.
8. The Affirmative Action Officer designee shall maintain records of all complaints and any pertinent information or data for three (3) years after the case is closed.

## **NATIONAL ENDOWMENT FOR THE ARTS PROCEDURES FOR FILING CIVIL RIGHTS COMPLAINTS**

### **Who Can File**

An individual may file a formal complaint with the Office of Civil Rights if they believe that they have been discriminated against by an organization, which has received Endowment funds, on the basis of race, color, sex, national origin, disability and age. In order to be eligible to file a formal complaint with OCR, you must be a member or a representative for a "protected class." A protected class is comprised of persons who fit into any of the aforementioned categories. Thus, if you believe that you have been discriminated against on the basis of your race, color, national origin, disability, sex, or age, you are a member of a protected class. Federal law prohibits discrimination against any of these classes of individuals.

### **RESOLVING YOUR COMPLAINT PRIOR TO CONTACTING OCR**

#### **Resolution through Institutional Grievance Procedures**

An individual who believes that he or she has been discriminated against based on race, color, national origin, disability, sex, or age may choose to exercise their rights under the civil rights statutes applicable to all applicants and recipients of Endowment funds. The Endowment requires organizations that apply for and receive funding to comply with the following civil rights laws:

#### **Title VI of the Civil Rights Act of 1964**

#### **Section 504 of the Rehabilitation Act of 1973 as amended**

#### **Americans with Disabilities Act**

#### **Age Discrimination Act of 1975**

#### **Title IX of the Education Amendments of 1972, as amended**

Organizations that are recipients of Endowment funds are required by law to maintain internal procedures for resolving complaints of discrimination. Before filing a formal complaint with OCR, individuals are strongly encouraged to avail themselves of these internal procedures.

If a complaint cannot be resolved at the informal level or if the individual chooses not to use an organization's internal procedures, he or she should contact in writing the director or staff of the Civil Rights Office at:

#### **Civil Rights Office**

#### **National Endowment for the Arts**

**1100 Pennsylvania Avenue, NW, Room 812**

**Washington, DC 20506**

**Voice: (202) 682-5454**

**TDD: (202) 682-5695**  
**FAX: (202) 682-5553**

## **How to File a Complaint with NEA's Civil Rights Office (OCR)**

### **What To Do**

All complaints filed with OCR must be in writing and include the following information: Your name, address, and telephone number (home/business).

A description of the alleged discriminatory act(s) in sufficient detail to enable OCR to understand what occurred, when it occurred, and the basis for the alleged discrimination (race, color, national origin, sex, disability, or age).

### **When To File A Complaint**

A complaint must be filed with OCR within 90 days of the date of the alleged discriminatory act, unless the time for filing is extended by OCR.

### **Evaluation Of A Complaint**

Upon receiving a complaint of discrimination, OCR will conduct a pre-investigation to determine:

#### **1. Jurisdiction**

Did the Endowment fund the program or activity? If OCR determines that your complaint is not within its funding jurisdiction, it will close its case file on the matter. If it is determined that another Federal agency might have jurisdiction in the matter, OCR will transfer your case to that agency.

#### **2. The Individual is a Member of a Protected Class**

In order for OCR to investigate an individual's complaint of discrimination, the person complaining must be a member of or a representative for a protected class. A valid complaint involves discrimination against a person because of race, color, national origin, sex, disability, or age.

#### **3. Timeliness**

If an individual fails to file their complaint with OCR within 90 days of the alleged act of discrimination, the complaint is deemed untimely unless it involves an ongoing series of discriminatory acts.

### **Investigation of a Complaint**

If OCR determines that it has jurisdiction, an acknowledgment letter is sent to the complainant and a notification letter is sent to the recipient organization. Based on a review of the documentation submitted by the complainant, the OCR may send an interrogatory letter to the recipient organization requesting information to facilitate the preinvestigation of the allegations. Additional information from the complainant may be necessary or an on-site investigation of the recipient organization.



### **Retaliation and Intimidation**

A recipient of Endowment funds may not retaliate against any person who has filed a complaint, testified, assisted or participated in any manner in an investigation or proceeding under the five statutes enforced by OCR. If an individual believes that he or she is the victim of such retaliatory action, he or she may file a complaint too with OCR.

### **Prohibitions against Intimidation or Retaliation**

A recipient may not intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone who has either taken action or participated in an action to secure rights protected by the civil rights statutes enforced by OCR. If any individual believes that he or she is being harassed or intimidated by a recipient because of the filing of a complaint or participating in the resolution of it, a complaint alleging such harassment or intimidation may be filed with OCR.

### **Letters of Finding and Enforcement**

The letter of finding issued to the recipient organization found in noncompliance with the regulations includes recommendations to come into compliance. If the recipient organization is willing to comply with the recommendations in the finding letter, a compliance agreement between the recipient organization and the Endowment is entered. The compliance agreement specifies what the recipient organization agrees to do to come into compliance, including timeframes for completion and submission of reports to assist the OCR in monitoring compliance. If the recipient organization is unwilling to comply, the OCR will move immediately to initiate enforcement actions which include, but are not limited to suspension of Endowment funding.

### **What to do if you disagree with OCR's Resolution of Your Complaint**

OCR is committed to ensuring that every complaint is appropriately resolved. Questions or concerns about OCR's resolution of a complaint, should be directed to the Director of OCR.

### **The Right to File a Separate Court Action**

The complainant should be aware that a separate court action may be filed regardless of OCR's findings. If the complainant wishes to file a court action, he/she may do so through an attorney.

### **Other Ways Complaints Can be Filed**

OCR may also consider a complaint resolved when any of the following occur:

If the complaint has been investigated by another agency, and the resolution of the complaint meets OCR standards;

If OCR determines that the evidence is insufficient to support a finding of a violation;

If the complainant withdraws his or her complaint; or,

If OCR obtains information indicating that the allegations raised by the complaint have been resolved.

### **Investigatory Uses of Personal Information**

OCR processes complaints of discrimination and conducts compliance reviews on organizations that receive Federal financial assistance from the Endowment. The resolution of such complaints may involve the collection and analysis of personal information such as student records (including academic standing) and, in some cases, employment records. No law requires a complainant to give personal information to OCR, however, if OCR is unable to obtain information needed to investigate or to otherwise resolve allegations of discrimination, it may be necessary to discontinue the complaint resolution process. There are two laws governing personal information submitted to all Federal agencies, including OCR: the **Privacy Act of 1974 (Privacy Act), 5 U.S. § 552a**, and the **Freedom of Information Act (FOIA), 5 U.S. § 552**. The Office of Civil Rights does not reveal the name or other identifying information about an individual unless it is necessary for the completion of an investigation or for enforcement activities against an institution that violates the laws, or unless such information is required to be disclosed under the **FOIA** or the **Privacy Act**.

(Retrieved June 11, 2004 from <http://www.nea.gov/about/Civil.html#civil>)