

TITLE 260 – DEPARTMENT OF LABOR AND TRAINING

CHAPTER 10 – GENERAL MANAGEMENT

SUBCHAPTER 00 - N/A

PART 5 – Rules of Procedure for Administrative Hearings

5.1 Authority

This Regulation is promulgated pursuant to R.I. Gen. Laws §§ 42-16.1-1 *et seq.*, 42-35-1 *et seq.*, 42-92-1 *et seq.*, and 28-14-1 *et seq.*

5.2 Purpose

- A. These rules ("hereinafter, Rules" or "Regulations") are adopted for the purpose of assisting in carrying out the functions, powers and duties assigned to the Department of Labor & Training (hereinafter, Department"), whether in effect prior to or subsequent to the adoption of these Rules.
- B. These Rules shall govern the conduct of adjudicatory proceedings commenced before the Department after their effective date. These Rules shall be liberally construed to further the fair, prompt and orderly administration and determination of adjudicatory proceedings in conformity with the Rhode Island Administrative Procedures Act. To the extent that any part of these Rules are inconsistent with applicable law or the terms of any other rule or regulation promulgated by the Department, the applicable law and/or the terms of such other rule or regulation shall be deemed to apply.

5.3 Definitions

- A. When used in these Rules, the following words, except as otherwise required by the context, shall have the following meaning:
 - 1. "Complaint" means a formal written allegation filed with the Department and assigned a case number by the Department
 - 2. "Contested Case" means an adjudicatory proceeding before a Hearing Officer of the Department in which the legal rights, duties or privileges of a Party are determined.
 - 3. "Department" means the Department of Labor & Training.
 - 4. "Department Counsel" means the legal representative of the Department.

5. "Director" means the Director of the Department.
6. "Division" means a Division of the Department with the authority to perform the functions of the Department as designated by statute.
7. "Hearing Officer" means the individual(s) authorized by law or duly designated by the Director to conduct hearings, write decisions and make a final decision for the Department.
8. "Party" or "Parties" means each Person named or admitted as a Party, or properly seeking and entitled as of right to be admitted as a Party in a Contested Case.
9. "Person" means any individual, partnership, corporation, limited liability company, association, governmental subdivision, public or private organization or any other entity however formed.
10. "Just and Valid" means there exists a set of facts of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs which would induce a reasonably intelligent and prudent person to believe that a violation(s) of law, rule, or regulation has occurred.
11. "Respondent" means a Party who is the subject of a complaint and/or Department investigation pursuant to § 5.4 of this Part.

5.4 Complaints and Department Investigations

- A. Complaints. A complaint may be made by any Person against any Employer or any Person who employs individuals in the course of their business. Such complaint shall be in writing, signed by the complainant and shall be required to be on a form provided by the Department. The Department or the applicable Division thereof shall make an initial determination whether or not the complaint is within the Department's jurisdiction. If no jurisdiction exists, the Department shall notify the complainant in writing. If jurisdiction exists, the Department shall conduct whatever investigation it deems appropriate, including forwarding a copy of the complaint to the Respondent.
- B. Upon completion of its investigation, the Department shall take one (1) of the following actions:
 1. If the Department determines that the complaint is not just and valid, the Department shall take no action on the complaint and shall advise the Complainant and Respondent in writing of its determination and that the complaint has been dismissed. The Department shall also advise the Parties that its decision may be appealed to the Department's Adjudication Unit, within thirty (30) days of the date of the Department's Decision. The Adjudication Unit will then schedule a hearing on the matter and subsequently issue a Final Department Determination.

2. If the Department determines that the complaint is just and valid, the Department shall take such action as it deems appropriate under applicable law and the rules and regulations adopted pursuant thereto. In cases where the Department determines the complaint is valid and the amount of wages due equals \$1,000 or 10 days of wages, whichever is less, the Department will send written notice to both the complainant and respondent stating that the Department has determined that the allegation(s) contained in the complaint are just and valid and that the wages claimed are owed. The aggrieved party may appeal the Decision to the Department's Adjudication Unit for a Final Department Determination.
- C. Department Investigations. The Department on its own authority may initiate an investigation and take action against an Employer. All such actions shall be upon such terms and conditions as are permitted under applicable law and the rules and regulations adopted pursuant thereto. The Department's actions include but are not limited to entering into settlements between all parties which shall be memorialized into a formal Settlement Agreements. The Settlement Agreements shall contain language establishing remedies for a party's failure to fulfill its obligation(s) as outlined in the Settlement Agreement. Executed Settlement Agreements will result in the case being dismissed with prejudice by the Adjudication Unit.

5.5 Notice of Contested Case

- A. Notice Required. The Department shall give notice ("Notice") to all Parties of the initiation of a Contested Case. The Notice shall be designed to order a hearing to all parties pursuant to R.I. Gen. Laws § 42-35-9. The Notice shall identify the specific law(s) that the complainant alleges has been violated. The notice shall also advise the Parties that they are required to take with them, to the hearing, any witnesses they intend on calling to testify and any supporting evidence with them to the Hearing.
- B. The Notice shall advise the Employee that failure to attend the Hearing without the Hearing Officers prior consent will result in the dismissal of the complaint and advise the Employer that its failure to attend the Hearing, without the Hearing Officer's prior consent, will result in the complainant's allegations being confirmed.
- C. The Notice shall also state that a request for a continuance is at the sole discretion of the Hearing Officer, which shall not be unreasonably denied, and that all requests for a continuance must be received by the Hearing Officer no later than seven (7) business days prior to the scheduled hearing.
- D. Contents of Notice: The Notice shall comply with R.I. Gen. Laws § 42-35-9 (b).

5.6 Prehearing Conferences

- A. It is the policy of the Department to encourage the use of prehearing conferences as a means of making more effective use of hearing time and to otherwise aid in the disposition of the proceeding or the settlement thereof.
- B. The Hearing Officer may, with reasonable written notice, require that all Parties attend a prehearing conference to consider the following:
 - 1. the simplification, narrowing, and clarification of the issues;
 - 2. the possibility of obtaining written stipulations, admissions, agreements with respect to the introduction of documents or similar agreements which will avoid unnecessary proof;
 - 3. the identification of witnesses and the limitation of the number of witnesses;
 - 4. the possibility of agreement disposing of all or any of the issues in dispute;
 - 5. the consideration of outstanding motions;
 - 6. the status of settlement negotiations, if any;
 - 7. the use of pre-filed testimony, where appropriate;
 - 8. any matters of discovery, including limitation of data requests, document requests, or other discovery or resolving disputes as to the scope of discovery;
 - 9. scheduling of hearings; and
 - 10. such other matters as may aid in the final disposition of the proceeding.
- C. All Parties shall attend the prehearing conference fully prepared to discuss all matters related to the proceedings. Failure of any Party to attend the prehearing conference may constitute a waiver of all objections to any order or ruling issued as a result of the prehearing conference unless good cause is shown.
- D. At the sole discretion of the Hearing Officer, the Parties may be permitted to waive the prehearing conference by filing with the Hearing Officer a stipulation prior to the prehearing conference that contains the following:
 - 1. agreement to the issues in the matter,
 - 2. an agreed to discovery schedule,
 - 3. three (3) agreed to possible dates for a hearing, and

4. any other agreements as to matters contained in § 5.6(B) of this Part.
- E. In the discretion of the Hearing Officer, with agreement of the parties, prehearing conferences, conference hearings, or status hearings may be held by telephone, electronically, or by any other means.

5.7 Representation

- A. Appearances.
 1. The Department shall notify each Party that each Party may retain legal counsel admitted in the State of Rhode Island. Said notification shall be set forth in the Department's order appointing a Hearing Officer.
 2. Individuals, and partners of partnerships, may appear *pro se* if they choose. Corporations may not appear *pro se*.
 3. If a Party is not appearing *pro se* he, she, or it must be represented by a member in good standing of the Bar of the State of Rhode Island or by out of state attorneys admitted *pro hac vice* by the Superior Court or by the appropriate court unless exempted pursuant to R.I. Gen. Laws § 11-27-11.
 4. All attorneys must conform to the standards of ethical conduct required of practitioners before the courts of the State of Rhode Island.
- B. Appearances of Present and Former Employees of the Department.
 1. No person who is currently an employee of the Department may appear before the Department on behalf of any Person or to represent any Person or act as an expert witness before the Department except in the performance of his/her official duties as an employee of the Department.
 2. No person having been so employed may, within one (1) year after said employment has ceased, appear before the Department on behalf of any other Person, or to represent any Person or act as an expert witness before the Department.

5.8 Filing of Pleadings and Other Documents

- A. Title. All pleadings and other documents filed with the Department in any Contested Case shall, whenever possible, state the file number, if any, the title of the proceeding and the name of the Person on whose behalf the filing is made.
- B. Form and Size. All pleadings and other documents filed with the Department, except those documents which are kept in a smaller or larger format during the ordinary course of business, are to be submitted on 8½ by 11 inch paper. At the discretion of the Hearing Officer, filings may be made by tele-copier, facsimile, or by electronic mail or any other manner or means approved by the Hearing

Officer. If filings are made electronically, the Party shall also file a hard copy of any such electronic filing. All documents must include, if applicable, the Rhode Island Bar number, address, telephone number, facsimile number and e-mail address of each attorney and pro se litigant. All papers shall be filed during Regular Business Hours. The Department's date stamp shall be presumptive of the actual date of filing.

- C. Signature. The original copy of each pleading shall be signed and dated by the Party on whose behalf the pleading is made or by the Party's authorized representative. This signature shall constitute a certification that the individual has read the document, knows the contents thereof and to the best of his/her knowledge believes that such statements are true, that it is not interposed for delay and that if the pleading has been signed by an authorized representative, he/she has full power and authority to do so.
- D. Construction. All pleadings shall be liberally construed and errors or defects therein which do not mislead or affect the substantial rights of the Parties involved may be disregarded.

5.9 Service

- A. Service Upon Parties and Others. A copy of all pleadings and other documents filed in any proceeding governed by these Rules shall be served upon all other Parties.
- B. Manner of Service. Unless otherwise ordered or authorized by the Hearing Officer, service under these Rules shall be made upon a Party or upon the Party's attorney, if an appearance has been entered, by first class mail postage prepaid, certified mail or hand delivery to his or her place of business, home address or other address supplied by the Party in the pleadings. Service upon persons who have not yet made an appearance shall be at the last address on file with the Department for any licensee. For non-licensees, service shall be at the last known address which the Department reasonably believes will result in actual delivery to the individual. Service by mail is complete upon mailing.
- C. Certificate of Service. There shall accompany and be included in the original of each pleading filed with the Department a certificate of service showing service on all Parties.
- D. Date of Certificate to Govern. In addition to the provisions of § 5.10(A) of this Part, the time for response to all pleadings shall commence as of the date of the certificate of service. However, if service is made by mail, then one (1) day shall be added to the prescribed period.

5.10 Time

- A. Computation. Unless otherwise specifically provided by law, computation of any time period referred to in this Part shall begin with the first day following the act which initiates the running of the time period (including Saturday, Sunday and legal holidays). The last day of the time period so computed is to be included unless it is a Saturday, Sunday or legal holiday or any other day on which the Department is closed, in which case the period shall run until the end of Regular Business Hours of the next following business day.
- B. Extensions of Time. It shall be within the discretion of the Hearing Officer, for good cause shown, to extend any time limit. All requests for extensions of time shall be made by written motion filed with the Hearing Officer before the expiration of the applicable time period unless waived by the Hearing Officer.

5.11 Motions

- A. General. Any Party may request that the Hearing Officer enter any order or action not inconsistent with law or these Rules. The types of motions made shall be those which are permissible under these Rules and the Rhode Island Superior Court Rules of Civil Procedure ("Super. R. Civ. P.").
- B. Presentation/Objections to Motions. Motions may be made in writing at any time before or after the commencement of a prehearing conference or hearing, and/or they may be made orally during a prehearing conference or hearing. Each motion shall set forth and/or state the grounds for the desired order or action and state whether oral argument is requested. Within ten (10) days after a written motion is filed with the Hearing Officer and served on the opposing Party(ies), a Party opposing said motion must file a written objection to the granting of the motion, and shall, if desired, request oral argument. All written motions and objections shall be accompanied by a written memorandum specifying the legal and factual basis for the Party's position.
- C. Action on Motion. The Hearing Officer shall, if he/she determines oral argument on the motion is warranted, give notice of the time and place for such argument. The Hearing Officer may rule on a motion without argument if the motion involves a matter as to which the presentation of testimony or oral argument would not advance the Hearing Officer's understanding of the issues involved or if disposition without argument would best serve the public interest. The Hearing Officer may act on a motion when all Parties have responded thereto, or the deadline for response has passed, whichever comes first.

5.12 Discovery

- A. General. The Department favors prompt and complete disclosure and exchange of information and encourages informal arrangements among the Parties for this exchange. It is the Department's policy to encourage the timely use of discovery

as a means toward effective presentations at hearing and avoidance of the use of cross-examination at hearing for discovery purposes.

- B. Procedure. Any Party, by written request served upon all other Parties, may request the other Party to produce for inspection, copying or photocopying document, object or tangible thing which are relevant to the subject matter of the hearing
- C. Hearing Delay. No hearing shall be continued to permit the completion of discovery unless due diligence is shown.
- D. Discovery Schedule. At the discretion of the Hearing Officer, the discovery schedule shall be set at the prehearing conference. The Hearing Officer may amend such discovery schedule at the request of a party or on his or her own volition.
- E. Written Discovery. Written discovery as set forth in Super. R. Civ. P. is allowed but may be limited by the Hearing Officer.
- F. Types of Discovery. Any other types of discovery as set forth in Super. R. Civ. P. may be allowed in the discretion of the Hearing Officer.
- G. Discovery Disputes. Objections to discovery requests shall be made pursuant to Super. R. Civ. P. If there is a dispute between the Parties relating to a Party's failure to respond to discovery, the Party requesting the discovery shall comply with Super. R. Civ. P. 37(a)(2) prior to filing a Motion to Compel Discovery with the Hearing Officer.
- H. A Party is not required to file discovery responses with the Hearing Officer unless otherwise ordered by the Hearing Officer.

5.13 Subpoenas

Upon application of any Party, subpoenas requiring the attendance and testimony of witnesses and to compel the production and examination of papers, books, accounts, documents, records, certificates and other evidence that may be necessary or proper for the determination and decision of any question before the Hearing Officer may be issued by the Director or his/her designee upon submission to the Hearing Officer. Except as may be otherwise provided by law, including, without limitation, the provisions of R.I. Gen. Laws § 42-14-11, in cases where a subpoena is not honored, the Director or his/her designee may elect to make application to the State of Rhode Island Superior Court for an order to show cause why the Person who failed to honor the subpoena shall not be held in contempt and for such further relief as may be appropriate. The Hearing Officer may, *sua sponte*, or on motion of any of the Parties or witnesses, issue such protective orders, grant such motions to quash and grant other motions as justice or fairness may require.

5.14 Evidence

- A. Rules of Evidence. Irrelevant, immaterial or unduly repetitious evidence shall be excluded in all proceedings wherein evidence is taken. While the rules of evidence as applied in civil cases in the Superior Courts of this state shall be followed to the extent practicable, the Hearing Officer shall not be bound by the technical evidentiary rules. Evidence not otherwise admissible may be admitted, unless precluded by statute, when necessary to ascertain facts not reasonably susceptible of proof under the rules, if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. The rules of privilege recognized by law shall apply. Objections to evidentiary offers may be made and shall be noted in the record.
- B. Exhibits, Copies. In all cases wherein evidence is taken, exhibits may be introduced in the form of copies or excerpts, if the original is not readily available. Upon request, a Party shall be given an opportunity to compare the copy with the original.
- C. Administrative Notice. In all proceedings wherein evidence is taken, notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the Department's specialized knowledge; but Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any report or data required by law or regulation to be filed with the Department, and they shall be afforded an opportunity to contest the material so noticed. The Hearing Officer's experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence. The burden is on the Party requesting the Hearing Officer's notice to produce the documents or other matter for the Hearing Officer's review.
- D. Department Employees, Agents and Consultants. The Hearing Officer may employ the use of Department employees, agents and consultants to assist him/her in the evaluation of any evidence introduced at the hearing. In the Hearing Officer's discretion, he/she may allow the presence of these persons at the hearing.
- E. Oath. All testimony shall be under oath or by affirmation.
- F. Testimony. At the discretion of the Hearing Officer, an adverse inference may be drawn by an assertion by a witness or a Party of his/her Fifth Amendment rights under the U.S. Constitution.

5.15 Conduct of Hearings

- A. General. Hearings shall be as informal as may be reasonable and appropriate under the circumstances. All Parties, witnesses and other Persons at a hearing shall conduct themselves in a manner consistent with the standards of decorum

commonly observed in any courtroom. Where such decorum is not observed, the Hearing Officer may take appropriate action including ejectment or adjournment, if necessary.

- B. Duties of Hearing Officer. The Hearing Officer shall conduct the hearing, make all decisions regarding admission or exclusion of evidence or any other procedural matters and either administer oaths to all witnesses or ask the stenographer to do so.
- C. Order of Proceedings. Except as otherwise required by law, it shall be the usual practice that the Department or the complainant shall open. Where evidence is peculiarly within the knowledge of one Party, or in cases in which Contested Cases have been consolidated or where there are multiple Parties, the Hearing Officer may, in his/her discretion, direct who shall open and shall further designate the order of presentation.
- D. Rights of Parties. Parties shall have the right to present evidence, cross-examine witnesses, object, make motions, and present arguments.
- E. Record of Proceedings.
 - 1. A complete record of the proceedings shall be recorded on audiotape, or at the discretion of the Hearing Officer, by stenographic record. In the event the Hearing Officer orders a stenographic record, the Hearing Officer shall declare which Party or Parties shall bear the cost thereof. Any Party may on his, her or its own initiative order a stenographic record made of the proceedings. The requesting Party shall incur all costs associated therewith. The Hearing Officer shall be provided, at no cost, with the original of the stenographic record and Department Counsel shall be provided with a copy at no cost. Any Party may request a copy of the audiotape record of the proceedings. The requesting Party shall bear the cost thereof.
 - 2. If a Party chooses to appeal a final Department decision to Superior Court pursuant to R.I. Gen. Laws § 42-35-1 *et seq.* and the Superior Court requires a transcript of the hearing, said Party shall be responsible for having the transcript prepared by an independent person or company at his, her or its expense within twenty (20) days of filing the appeal.
- F. Public Hearings. Except as required by law, all hearings are to be open to the public. In general, any Person who is not a Party to a proceeding may, in the discretion of the Hearing Officer, be permitted to make oral or submit written statements on any issues relevant to the proceeding.
- G. Close of Proceedings. At the conclusion of the evidence, the Hearing Officer may, in his/her discretion, permit the Parties to argue orally and/or to submit written briefs. The Hearing Officer may, within his/her discretion, direct that proposed findings of fact and conclusions of law be submitted by the Parties.

The record in the proceeding shall close after oral argument, the deadline for the filing of the briefs or upon such date as may be set by the Hearing Officer. No evidence shall be admitted thereafter, unless otherwise ordered by the Hearing Officer. The Hearing Officer may in any case require either Party, with appropriate notice to the other Party, to submit additional evidence in any matter relevant to the hearing.

- H. Waiver of Hearing. In any proceeding, if the Parties agree to waive the hearing, the Hearing Officer may dispose of the matter upon the pleadings and other submittals of the Parties.
- I. Dispositions. Unless otherwise precluded by law, disposition may be made of any Contested Case at any time by stipulation, settlement agreement, default or dismissal by the Hearing Officer. A joint request for a stay of the hearing for the purpose of preparing documents relevant to the above shall be forwarded to the Hearing Officer and may be granted within the sound discretion of the Hearing Officer.
- J. Settlement Agreements. The Department may enter into a settlement agreement with a Party or Parties prior to a prehearing conference being held in an administrative proceeding. A settlement agreement is valid if signed by the Parties and a Department representative. The Parties and the Department may agree to the terms of a settlement agreement; provided however, such a settlement agreement must be approved by the Hearing Officer to be effective. Settlement agreements are considered public records pursuant to the Access to Public Records Act, R.I. Gen. Laws § 38-2-1 *et seq.*

5.16 Penalties

In determining the appropriate penalty to impose on a Party found to be in violation of a statute(s) or regulation(s), the Hearing Officer shall give due consideration to the size of the Employer's business, the good faith of the Employer, the gravity of the violation, the history of prior violations, and the failure to comply with recordkeeping requirements.

5.17 Decisions

All decisions rendered by the Hearing Officer at the conclusion of a hearing shall be in writing and shall comply with the requirements of R.I. Gen. Laws § 42-35-12. The decision of the Hearing Officer shall be considered a final decision by the Department. The Decision and Order shall be delivered to all Parties with a notice indicating the right to take an appeal of the Decision and Order to the Superior Court pursuant to R.I. Gen. Laws § 42-35-15.

5.18 Judicial Review

Any Party aggrieved by a final written order of the Department may file a complaint with the Superior Court pursuant to R.I. Gen. Laws § 42-35-15. In the absence of a timely appeal, the order or decision of the Department shall become final and no further administrative appeal may be taken.

5.19 Default

If any Party to a proceeding fails to answer a complaint, plead, appear at a prehearing conference or hearing or otherwise fails to prosecute or defend an action as provided by these Rules, the Hearing Officer may enter a default judgment against the defaulting Party, take such action based on the pleadings and/or other evidence submitted by the non-defaulting Party as the Hearing Officer deems appropriate in his/her sole discretion or take such other action as the Hearing Officer deems appropriate in his/her sole discretion.

5.20 Disqualification; Incapacity of Hearing Officer

- A. Disqualification. Any Party may make a motion to the Director requesting that he/she disqualify or remove the Hearing Officer from the proceeding. The motion shall be accompanied by an affidavit setting forth the reasons for the disqualification. In the event that the motion to disqualify is granted, the Director shall assign another Hearing Officer to the matter.
- B. Incapacity. When the Hearing Officer becomes incapacitated or unavailable to complete a hearing and/or render a decision, the hearing shall be conducted and/or the decision shall be rendered by a substitute Hearing Officer appointed by the Director. If any party objects to the substitution, that party must prove prejudice by presentation of argument and evidence to the substitute Hearing Officer. If the substitute Hearing Officer finds that the objecting party will be prejudiced, the substitute Hearing Officer will issue an Order making such findings and will hear the matter *de novo*.

5.21 Miscellaneous

- A. Intervention. Any Person claiming a right to intervene or an interest of such a nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought may seek to intervene in any proceeding. Intervention may be initiated by filing a motion to intervene with the Hearing Officer. The motion shall set out clearly and concisely the facts from which the nature of the movant's alleged right of interest can be determined, the grounds for the proposed intervention and the position of the movant in the proceeding.
- B. Ex Parte Consultations. No Person who is a Party to or a participant in any proceeding before the Department or the Party's counsel, employee, agent or

any other individual acting on the Party's behalf, shall communicate *ex parte* with the Hearing Officer about any matter related to the proceeding, and the Hearing Officer shall not request or entertain any such *ex parte* communications. The prohibitions contained above do not apply to those communications which relate solely to general matters of procedure and scheduling.

- C. Consolidation. The Hearing Officer may, in his/her discretion, consolidate or combine several matters for purposes of hearing or other proceedings, when he/she finds that sufficient common issues of fact or law or both are involved.
- D. Plural. Words in the singular number include the plural, and vice-versa, except where the context otherwise requires or where a contrary result appears from necessary implication.
- E. Statutes. If any statute has different requirements than those contained within this Regulation, the statute shall be controlling.
- F. Public Documents. The Department reserves the right to publish in any form any public document.

5.22 Settlement Agreements

- A. Settlement Agreements. At any time after the opening of the prehearing conference and prior to the close of the record of a Departmental hearing, the Parties may attempt to dispose of the matter by entering into a settlement agreement as provided in § 5.15(J) of this Part. Every settlement agreement shall contain, at a minimum, an admission of all jurisdictional facts and express waivers of further procedural steps before the Hearing Officer, including the right to appeal. Upon receiving a settlement agreement, the Hearing Officer may:
 - 1. Accept the settlement agreement and enter an Order reflecting the terms and conditions of the Settlement Agreement.
 - 2. Reject the settlement agreement and state the reasons therefore in writing and take such other appropriate administrative action.
 - a. In the event that the Hearing Officer rejects the settlement agreement, either Party may appeal the rejection directly to the Director. Such appeal shall be in writing and shall be filed with the Director no later than seven (7) days after the date the Hearing Officer notifies the Parties, in writing, of the rejection of the settlement agreement. Upon receipt of an appeal, the Director shall take whatever action he/she deems appropriate. Should the Director confirm the Hearing Officer's decision to reject the settlement agreement, such rejection shall be deemed an interim order of the Director and not a final order and the matter shall continue through the administrative hearing process. Nothing

herein shall prevent the Parties from subsequently entering into and presenting to the Hearing Officer for consideration a new settlement agreement.

5.23 Public Information

- A. Access to public records shall be governed in accordance with R.I. Gen. Laws § 38-2-1 *et seq.* All hearings are conducted pursuant to the Administrative Procedures Act, R.I. Gen. Laws § 42-35-1 *et seq.* Except where the Hearing Officer directs otherwise, or when the documents in question are governed by R.I. Gen. Laws § 27-13.1–5(f), upon the opening of the prehearing conference all pleadings, orders, communications, exhibits and other documents filed with the Hearing Officer shall become public records. Any claim of privilege shall be governed by the policy underlying the Access to Public Records Act, with the burden of proof resting on the party claiming the privilege.
- B. Any Party may request a preliminary finding that some or all of the information is not a public document under the Access to Public Records Act. A preliminary finding that some documents are privileged shall not preclude the Department from later determining that those documents are public in accordance with R.I. Gen. Laws § 38-2-1 *et seq.*
- C. Claims of privilege shall be made by filing a written request with the Department. One copy of the original documents, boldly indicating on the front page, “Contains Privileged Information – Do Not Release,” shall be filed specifically identifying the information for which the privilege is sought, along with a description of the grounds upon which the Party is claiming a privilege. If a document is filed electronically, it shall contain a statement that the information has been redacted; however, the original document must be filed as delineated above.
- D. The Department shall retain the documents for which privilege is asserted to exist in a secure, non-public file until a determination is made as to whether to grant the request for privileged treatment.
- E. Any person, whether or not a Party, may apply to the Department for release of the information, pursuant to R.I. Gen. Laws § 38-2-1 *et seq.*, the Access to Public Records Act. Such requests shall be governed by R.I. Gen. Laws § 38-2-1 *et seq.* and any regulations thereunder.

5.24 Severability

If any Section, term, or provision of this Regulation should be adjudged invalid for any reason, that judgment should not effect, impair, or invalidate any remaining section, term, or provision, which shall remain in full force and effect.

260-RICR-10-00-5

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Type of Filing: Refile Capabilities

Department of State

Regulation Effective Date

Original Signing Date

Department of State Initials

Department of State Date