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TITLE 220 – DEPARTMENT OF ADMINISTRATION

CHAPTER 80 – DIVERSITY, EQUITY AND OPPORTUNITY

SUBCHAPTER 05 – EQUAL OPPORTUNITY

~~PART 2 – State of RI Equal Opportunity Office Rules and Regulations Concerning Hearings of Discrimination Complaints~~
Rules of Practice and Procedure for Hearings on Complaints Issued by the State Equal Opportunity Administrator

2.1 Authority

~~The R.I. Gen. Law § 28-5.1, regarding Equal Opportunity and Affirmative Action Policy, establishes the Rhode Island State Equal Opportunity Office and sets forth its procedures and authority. These~~ Rules and Regulations are promulgated pursuant to R.I. Gen. Laws § 42-11-2.7(d) and R.I. Gen. Laws § 28-5.1-3.2(b).

2.2 PurposeScope

~~It is the function of the Rhode Island State Equal Opportunity Office to enforce the Law, which prohibits discrimination because of race, color, religion, sex, sexual orientation, gender identity or expression, age, national origin, or disability, in the field of employment in Rhode Island State Government. These~~ Rules shall govern hearings on complaints initiated by the State Equal Opportunity Office pursuant to R.I. Gen. Laws § 28-5.1-3.2(a).

2.3 Method of OperationDefinitions

~~The Office accepts, from both State employees and applicants for State employment, complaints of discrimination that are based on race, color, religion, sex, sexual orientation, gender identity or expression, age, national origin, or disability. The Office will investigate the allegations and shall make every effort by informal conference, conciliation and persuasion to achieve compliance. When these methods do not resolve a charge or complaint, the Office will conduct a formal hearing.~~

A. Wherever used in these Rules and Regulations, the following terms shall be construed as follows unless the context in which they are used clearly requires a different meaning:

1. “Administrator” means the State Equal Opportunity Administrator as established by R.I. Gen. Laws § 28-5.1-3(e).
2. “Agency” means any agency of any department or division within State government excluding the legislative branch.

3. “Associate director” means the Associate Director of the Office of Diversity, Equity and Opportunity as established by R.I. Gen. Laws § 42-11-2.7(b).
4. “Contested case” means a matter for which the Office has initiated a complaint pursuant to R.I. Gen. Laws § 28-5.1-3.2(a).
5. “Director” means the Director of the Department of Administration as established by R.I. Gen. Laws § 42-11-1.
6. “Employee” means any individual who is a State employee or was a State employee or was an applicant for State employment.
7. “Hearing officer” means the Administrator of Adjudication as defined by R.I. Gen. Laws §36-4-40.1, or another Hearing Officer designated by the Director.
8. “Office” means the State Equal Opportunity Office as established by R.I. Gen. Laws § 28-5.1-2(a).
9. “Order” means an Order made pursuant to R.I. Gen. Laws § 28-5.1-3.2(c) requiring a respondent to a complaint to cease and desist from any unlawful discriminatory practice and/or to take any affirmative action, including, but not limited to, hiring, reinstatement, transfer, or upgrading employees, with or without back pay, or dismissal, that may be necessary to secure compliance with any applicable affirmative action plan or with State or federal law. The Office shall not issue an Order without the approval of the Associate Director.
10. “Party” means the Administrator, in his or her official capacity, the Agency named in the complaint, and any Employee deemed by the Hearing Officer to have standing.

2.4 Definitions – Where Used in These Rules and Regulations **Complaints**

A. — The following words and terms shall have the following meanings whenever used in these Regulations:

1. — “Administrator” means the Administrator of the Rhode Island State Equal Opportunity Office.
2. — “Civil rights violation” means any discriminatory acts or practices.
3. — “Complaint” means a written allegation of a Civil Rights Violation, filed with the RI State Equal Opportunity Office, by an individual stating that he/she has been discriminated against by reason of race, color, religion, sex, sexual orientation, gender-

~~identity or expression, age, national origin, disability, sexual harassment, unlawful question (arrest record, criminal conviction, or other), or retaliation.~~

~~4. —“Complainant” means an individual filing a complaint of alleged discrimination in accordance with the Law or Executive Order.~~

~~5. —“Department” means an agency in Rhode Island State Government.~~

~~6. —“Discrimination” means:~~

~~a. —Prejudice or prejudicial outlook, action or treatment toward individuals who are not equally considered for appointments, promotions, transfers, training and work assignments based on race, color, religion, sex, sexual orientation, gender identity or expression, age, national origin, or disability.~~

~~b. —A violation of any state or federal nondiscrimination statute, regulation, or executive order.~~

~~7. —“Executive Order” means the Governor’s Executive Order on Sexual Harassment.~~

~~8. —“Hearing officer” means the person authorized by the State Equal Opportunity Office to conduct formal hearings regarding alleged Civil Rights Violations, filed with the RI State Equal Opportunity Office.~~

~~9. —“Law” means R.I. Gen. Law § 28-5.1 on Equal Opportunity and Affirmative Action.~~

~~10. —“Office” means the Rhode Island State Equal Opportunity Office.~~

~~11. —“Respondent” means a person or agency against whom an alleged charge or complaint is filed in accordance with the Law or Executive Order.~~

A. The Administrator, with the approval of the Associate Director, may initiate a complaint in accordance with R.I. Gen. Laws § 28-5.1-3.2(a).

B. No complaint shall be issued unless the Office has reason to believe that the Agency willfully failed to comply with the requirements of any applicable affirmative action plan or of R.I. Gen. Laws § 28-5.1-1 *et seq.*, or the Agency failed to meet the standards of good faith effort, reasonable basis, or reasonable action, as defined in guidelines promulgated by the federal Equal Employment Opportunity Commission as set forth in 29 C.F.R. § 1607.

C. All complaints issued by the Administrator shall name the Agency as the respondent. No Employee shall be named by the Office as a respondent to the complaint.

D. Any Employee may make motion to the Hearing Officer to become a Party.

E. The Administrator shall serve the complaint upon the Agency's head in accordance with R.I. Gen. Laws § 28-5.1-3.2(b). A copy of the complaint shall be sent to the Director.

F. The Agency shall respond to the complaint and appear at the hearing in accordance with R.I. Gen. Laws § 28-5.1-3.2(b).

2.5 Practice Before the State Equal Opportunity Office Standard

~~A. Any person may appear before the Office in his/her own behalf. Except as may otherwise be provided by law, no person may appear in a representative capacity before the Office other than:~~

~~1. Attorneys at-law duly qualified and entitled to practice before the Supreme Court of the State of Rhode Island;~~

~~2. Attorneys at-law duly qualified and entitled to practice before the highest court of any other state, to appear in a representative capacity before administrative agencies of such other state;~~

~~3. Such other persons as by law are expressly authorized to appear in representative capacities, and~~

~~4. A bona fide officer of the agency (respondent) if the Office deems it appropriate and is not otherwise prohibited by State law.~~

~~B. All persons appearing in proceedings before the Office in a representative capacity shall conform to the standards of ethical conduct required of attorneys before the courts of Rhode Island. If any such person does not conform to such standards, the Office may decline to permit such person to appear in a representative capacity in any proceeding before the Office.~~

The Hearing Officer shall determine whether the Agency willfully failed to comply with the requirements of any applicable affirmative action plan or of R.I. Gen. Laws § 28-5.1-1 *et seq.*, or the Agency failed to meet the standards of good faith effort, reasonable basis, or reasonable action, as defined in guidelines promulgated by the federal Equal Employment Opportunity Commission as set forth in 29 C.F.R. § 1607. The Hearing Officer shall issue a written decision in accordance with their determination.-

2.6 Complaint Hearings In General

~~A. Who May File - State employees and applicants for state employment may file a complaint of an alleged incident of discrimination at any time.~~

~~B. Form - A complaint shall be in writing and signed by the complainant using the form supplied by the RI State Equal Opportunity Office.~~

~~C. — Contents — A complaint shall be in such detail as to substantially apprise the Office of the time, place, and facts with respect to the alleged violation. It should contain the following:~~

~~1. — The full name, address, and telephone number of the person making the charge.~~

~~2. — The name and address of the State Agency, persons against whom the charge is made.~~

~~3. — A statement of facts alleged to constitute the violation, including the date, time, and place thereof.~~

~~4. — A statement describing any other action instituted by/on behalf of the complainant in any other form.~~

~~D. — Acceptance of Complaint~~

~~1. — The office shall accept for hearing any complaint, which it receives from an individual in compliance with the foregoing provisions of this article.~~

~~2. — In the event the Office receives a written statement from an individual which does not comply substantially with §§ 2.6(B) and (C) of this Part hereof, the Office may accept and docket the statement as an unperfected complaint. The Office shall notify the complainant in writing of the elements, which must be supplied to perfect the complaint. If the individual fails or refuses to perfect the complaint as specified, the complaint may be dismissed.~~

~~E. — Amendment — A complaint or any part thereof, may be amended by the complainant to cure technical defects or omissions, or to clarify or amplify allegations made therein, or to set forth additional facts of allegations related to the subject matter of the original complaint, and such amendments shall relate back to the original filing date.~~

~~F. — Withdrawal of Complaint — A complaint or any part thereof, may be withdrawn by the complainant at any time. A complainant's request to withdraw a complaint shall be in writing, signed, and witnessed. The Office shall approve the request if it is knowingly and voluntarily made, and shall promptly so notify all parties in writing.~~

~~G. — Deferral of Complaint — If a complaint has been filed, either simultaneously or at a later date, with the RI Human Rights Commission, or the Equal Employment Opportunity Commission, the State Equal Opportunity Office will defer to either Commission for investigation and answer to the complaint.~~

- A. All Parties should be afforded an opportunity to respond and present evidence and argument on all issues involved.
- B. Agencies must appear at hearings by appearance of legal counsel. Individual Employees, once named as Parties by the Hearing Officer, may represent themselves or be represented by legal counsel at their own expense. Consistent with R.I. Gen. Laws § 11-27-2, "Practice of Law," any person accompanying a Party who is not a lawyer (certified member of the bar of the State of Rhode Island) cannot represent the Party in the hearing.
- C. Continuances and postponements may be granted by the Hearing Officer in his or her discretion.
- D. Disposition may be made of any Contested Case by stipulation, agreed settlement, consent order or default.
- E. Should the Hearing Officer determine that written memoranda are required, the Parties will be notified by the Hearing Officer of the need to file a written document which discusses the issues of the case. Memoranda of law may always be offered in support of arguments offered by the Parties.
- F. The Administrator may, when he or she deems appropriate, retain independent legal counsel to prosecute any Contested Case.
- G. A record of each hearing shall be made. Any Party may request a transcript at its own expense. If a transcript is requested by any party, a copy of the transcript shall be provided, at no cost, to the Hearing Officer.

2.7 Procedure Upon ComplaintConduct of Hearings

- ~~A.— Docketing and Service of Complaint - Each complaint, once filed, shall be docketed and assigned a case number by the Office. The respondent shall be notified as soon as possible and in the order they are received following the date of filing.~~
- ~~B.— Maintenance of Records - Notwithstanding any other provision of these rules and regulations, once a complaint has been served on a respondent, the respondent shall preserve all records and other evidence which may be relevant to the case until the matter has been finally resolved.~~
- ~~C.— Investigation - After a complaint has been filed, the Office staff shall institute an investigation to ascertain the facts relating to the civil rights violation as alleged in the complaint and any amendments thereto. During the investigation of a complaint, the Administrator or office employee supervising the investigation may request the attendance of witnesses or the production for examination copies of any books, records or documents.~~

~~D. Determination After Investigation~~

~~1. Report - After investigation of a complaint, a report inclusive of all facts, findings, and recommendations, will be prepared and submitted to the Administrator for determination of probable cause.~~

~~2. Dismissal - If there is no conclusive evidence of probable cause, a written notice dismissing the case will be sent to all interested parties.~~

~~3. Substantial Evidence - If probable cause of a civil rights violation is evident, the Office will serve notice of such determination advising both parties that conciliation efforts will take place.~~

~~4. Conciliation - The Office will proceed to conciliate the settlement of the complaint and prevent the repetition of future civil rights violations. If an agreement is not reached, a formal hearing will be scheduled.~~

A. Hearings shall be conducted by the Hearing Officer who shall have authority to examine witnesses, to rule on motions, and to rule upon the admissibility of evidence.

B. The hearing shall be convened by the Hearing Officer. Appearances shall be noted and any motions or preliminary matters shall be taken up. Each Party shall have the opportunity to present its case generally on an issue by issue basis, by calling and examining witnesses and introducing written evidence.

C. The Administrator shall first present his or her case followed by presentation of the Agency and any other Parties.

D. The Hearing Officer shall have the authority to continue or recess any hearing and to keep the record open for the submission of additional evidence.

E. If for any reason a Hearing Officer cannot continue on a case, another Hearing Officer will be appointed who will become familiar with the record and perform any function remaining to be performed without the necessity of repeating any previous proceedings in the case.

F. Each Party shall have the opportunity to examine witnesses and cross-examine opposing witnesses on any matter relevant to the issues in the case.

G. Any objections to testimony or evidence and the basis for the objection shall be made at the time the testimony or evidence is offered.

H. The Hearing Officer may question any Party or any witness for the purpose of clarifying his or her understanding or to clarify the record.

- I. The scope of the hearing shall be limited to those matters specifically outlined in the complaint.
- J. Written evidence will be marked for identification. If the original is not readily available, written evidence may be received in the form of copies or excerpts. Upon request, Parties shall be given an opportunity to compare the copy with the original.
- K. Findings of fact shall be based solely on the evidence and matters officially noticed.
- L. If a Party fails to attend or participate in the hearing as requested, the Hearing Officer may issue a default ruling against such Party.

2.8 Conduct of HearingRecords of Proceedings

~~—All hearings shall be held pursuant to R.I. Gen. Laws Chapter 42-35.~~

- A. The record in a Contested Case shall include:
 - 1. All pleadings, motions, intermediate rulings;
 - 2. Evidence received or considered;
 - 3. A statement of matters officially noticed;
 - 4. Questions and offers of proof and rulings thereon;
 - 5. Proposed findings and exceptions;
 - 6. Any decision, opinion, or report by the Hearing Officer at or after the hearing; and
 - 7. All memoranda or data submitted to the Hearing Officer in connection with the Hearing Officer's consideration of the case.

2.9 Formal HearingsEx Parte Communications

- A. ~~—The respondent to a complaint may file a written answer to the complaint, appear at the hearing, give testimony and be represented by counsel and may obtain from the Office, a subpoena for any person or for the production of any evidence pertinent to the proceedings. The complainant must be present at the hearing and may be represented by counsel.~~
 - 1. ~~—The Hearing Officer from the RI State Equal Opportunity Office shall hear the case and make a decision based on the evidence presented thereto. The Hearing Office shall not be bound by the formal rules of evidence governing courts of law, but shall permit reasonable direct and cross-~~

examination and the submission of briefs. Testimony at the hearing shall be taken under oath and recorded by tape or otherwise.

2. ~~Sequence of the Hearing~~

a. ~~Introduction of the Hearing Officer~~

b. ~~Administration of oath to the parties and witnesses~~

c. ~~Complainant's Presentation~~

d. ~~Respondent's Presentation~~

e. ~~Complainant's closing statements~~

f. ~~Respondent's closing statements~~

3. ~~Appearance - The complainant must be present at the hearing and may present testimony or evidence and may either in person or by counsel, examine or cross-examine witnesses. If, after receiving proper notice, the complainant does not appear at the hearing, the complaint may be dismissed.~~

4. ~~Continuation and Adjournment - The Hearing Officer or Administrator may continue or adjourn the hearing to a later date.~~

5. ~~Improper Conduct - The Hearing Officer may exclude from the hearing room or from further participation in the proceedings any person that engages in improper conduct. Exceptions to this are only a party or his/her attorney or a witness engaged in testifying.~~

6. ~~Sequestering Witnesses - The Hearing Office may sequester witnesses from the hearing until the time of their testimony.~~

7. ~~Findings - If the Hearing Officer finds from the evidence that the respondent has engaged in a discriminatory practice, he/she shall make written findings of fact, conclusion of law and the decision. Within five (5) days after the decision of the Hearing Officer, the Office shall inform the parties of record of the decision. As part of its order, the Office may require the respondent to pay actual damages to the complainant and to take such affirmative action as the Hearing Office considers necessary, including a requirement for reports of the manner of compliance. If the Hearing Officer finds from the evidence that the respondent has not engaged in a discriminatory practice, the Office shall make written findings of fact and serve the complainant and respondent with a copy of the finding of fact and with an order dismissing the complaint.~~

There shall be no communications between the Hearing Officer and a Party or any of their representatives regarding any issue of fact or law in a case, without notice and opportunity for all Parties to participate.

2.10 Rules of Evidence

- A. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied in civil cases in the Superior Courts of this State shall be followed; but, when necessary to ascertain facts not reasonably susceptible of proof under the rules, evidence not admissible under those rules may be submitted if it is of a type commonly relied upon by reasonably prudent men and women in the conduct of their affairs. The Hearing Officer shall give effect to the rules of privilege recognized by law. Objections to evidence may be made and shall be noted in the record.
- B. A copy the Hearing Officer's decision shall be served upon the Associate Director and all Parties to the proceeding.
- C. In the event a decision is found in favor of the Administrator, and after approval by the Associate Director, the Office may issue an Order.
- D. Any Order issued by the Office shall be considered a Final Order and may be appealed in accordance with the Administrative Procedures Act, R.I. Gen. Laws § 42-35-1 et seq.

2.11 Severability

If any provision of this Regulation or the application thereof to any person or circumstances is held invalid or unconstitutional, the invalidity or unconstitutionality shall not affect other provisions or applications of this Regulation which can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this Regulation are severable.