

**410-RICR-20-00-3**

## **TITLE 410 - BOARD OF ELECTIONS**

### **CHAPTER 20 - ELECTIONS**

#### **SUBCHAPTER 00 - N/A**

#### **PART 3 - Administrative Complaint Procedure**

### **3.1**

- A. The Rhode Island Board of Elections hereby adopts this Part for the establishment of an administrative complaint procedure pursuant to and in accordance with Title IV, Section 402(a)(2) of the Help America Vote Act of 2002 ("HAVA") (P.L. 107-282) and the provisions of R.I. Gen. Laws § [17-7-5](#), as amended.
- B. This Part is adopted pursuant to the Administrative Procedures Act (R.I. Gen. Laws § [42-35-1](#), *et seq.*) and are available for public inspection at the offices of the Rhode Island Board of Elections, 50 Branch Avenue, Providence, Rhode Island.

### **3.2 Purpose**

The Rhode Island Board of Elections ("Board") hereby adopts this Part in order to carry out the adoption, maintenance, and implementation of the administrative complaint procedure required by the Help America Vote Act of 2002 ("HAVA"), in accordance with the requirements of Title IV, Section 402(a)(2).

### **3.3 Application**

This Part provides for an administrative complaint procedure for persons who believe that a state or local election official in a federal election violated Title III of the Help America Vote Act of 2002 and shall be applied uniformly and in a nondiscriminatory fashion to all complaints filed hereunder.

### **3.4 Definitions**

- A. For purposes of this Part, the following terms shall have the meanings set forth herein:
  - 1. "Complainant" means the person who files a complaint with the Board under the terms of this chapter.

2. "Federal election" means an election at which a federal office appears on the ballot.
3. "Federal office" means the office of President or Vice President, or of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress pursuant to Section 301(3) of the Federal Election Campaign Act.
4. "Respondent" means any state or local board or election official whose actions are alleged, in a written complaint provided for herein, to be in violation of Title III of the Help America Vote Act of 2002.
5. "Board" means the State Board of Elections as defined in R.I. Gen. Laws § [17-7-5](#).
6. "Local Board" means any of the Board of Canvassers for each of the cities and towns of the State of Rhode Island.
7. "State or local election official" means the Board, the Secretary of State, a clerk of any city or town board of canvassers, a local board, or any individual member, employee, officer, agent, or appointee thereof.
8. "Title III" means Title III of the Help America Vote Act of 2002, Public Law 107-252, 116 Stat., 1666 (2002), codified at 42 U.S.C. §§ 15481 through 15485.
9. "Presiding officer" means the person appointed by the Board to conduct a hearing on a complaint.

### **3.5 Filing of Complaints**

- A. Any person who believes that there has been a violation of any provision of Title III (that either has occurred, is occurring, or is about to occur), by any state or local election official may file a complaint with the Board in which the alleged violation occurred, as provided under these regulations. All complaints must:
  1. Be in writing, sworn to under oath and under penalty of perjury, signed by the complainant, and notarized on a form provided by the Board or on any other paper or form that complies with each of the requirements of these regulations. Complainants shall receive instructions as to the complaint process and their rights to a hearing.
  2. Include the full name, telephone number, and mailing address of the complainant.
  3. Include a description of the alleged violation of Title III sufficient to apprise the Board and respondent of the nature and specifics of the complaint.

4. If a hearing on the record is requested, the complainant must so state.
5. The completed and verified complaint shall be filed with the Board and shall certify that a copy of the complaint was provided via U.S. mail to each respondent. Respondents shall be provided the same information given complainants in § 3.5(A)(1) of this Part above.
6. Each respondent shall provide a written response within seven (7) days of receipt of the complaint, unless the parties agree on a longer time. The written response of each respondent shall be filed and served as provided by herein for complaints. Each respondent shall also have the right to request in writing that a hearing be held.
7. A complaint shall be filed within 90 days after the occurrence of the actions or events that form the basis for the complaint, including the actions or events that form the basis for the complainant's belief that a violation is about to occur, or, if later, within 90 days after the complainant knew, or with the exercise of reasonable diligence, should have known of those actions or events.
8. A complaint shall be deemed to have been filed on the day that the original signed and notarized document is actually received and filed with the Board.

### **3.6 Processing of Complaints**

- A. The Board, at its sole discretion, may process a complaint in any of the following ways:
  1. The executive director of the Board may dismiss the complaint, and issue a final determination, if the complaint does not comply with the requirements set forth in these regulations or, if the complaint does not, on its face, allege a violation of Title III with regard to a federal election.
  2. The executive director of the Board may dismiss the complaint, and issue a final determination, if the complaint is not filed within ninety (90) days of the final certification of the federal election at which the alleged violation took place.
  3. The Board may, upon agreement of all the parties, resolve the complaint informally, and issue a final determination without a formal proceeding. Any such informal resolution procedure shall be open to the public.
  4. The executive director of the Board shall schedule a date, time, and place for any hearing on the record.
  5. The executive director of the Board may consolidate multiple complaints into a single proceeding if the complaints relate to the same actions or

events giving rise to the complaint, or if the complaints raise common questions of law or fact.

### **3.7 Hearings**

- A. If requested by the complainant, respondent, or ordered by the Board, and the complaint has not been summarily dismissed under the provisions of these regulations, the Board shall schedule a hearing that shall proceed as follows:
1. The hearing shall be tape recorded and/or transcribed, and the tape and/or transcript shall constitute the official record of the hearing.
  2. Written notice of the hearing shall be given to all parties setting forth the date, time, and place of the hearing, and notice shall be sent to the mailing addresses set out in the complaint. When it is deemed reasonable by the executive director of the Board, said hearing shall be conducted within five (5) days from the date of filing the complaint with the Board.
  3. At the hearing, each party shall be given an opportunity to explain their positions and present evidence to support their position. At the sole discretion of the Board or presiding officer, this presentation may include documents, witnesses, oral argument, and tangible things relevant to the determination of the complaint. Any cross-examination shall be at the sole discretion of the Board or presiding officer. However, a person may testify or present evidence to contradict any other testimony or evidence. The record of the hearing shall consist of the written complaint, the written response(s), the tape and/or transcription of the hearing, and any documents/exhibits introduced at the hearing.
  4. A complainant, any respondent, or other person who testifies or presents evidence at the hearing may, but need not, be represented by an attorney.
  5. If the hearing is on consolidated complaints, then the complainants may be allowed or required to designate a single representative party to advocate for the consolidated class at the hearing.
  6. If the Board or presiding officer permits witnesses to testify, then they must be sworn in prior to their testimony being given.
  7. If a complainant fails to appear at the hearing, then the complaint may be dismissed with prejudice.

### **3.8 Determination**

A final determination on the complaint shall be made in writing within ninety (90) days of the filing of the complaint. A copy of the determination shall be mailed to the complainant(s) and the respondent(s). This time period may only be

extended upon the written consent of the complainant. The final determination of the Board or presiding officer shall be final and is only subject to discretionary review by the Rhode Island Supreme Court. The determination shall include notice of the availability of judicial review and the procedure for filing an appeal. If the presiding officer determines that there was a past, present or potential violation of Title III, then the written determination shall state the facts of the violation, set forth the specific violation of Title III, and provide for a remedy. The remedy awarded shall be directed to the improvement of processes or procedures governed by Title III, and must be consistent with state law.

### **3.9 Alternative Dispute Resolution**

- A. If a final determination of a complaint is not made within ninety (90) days of the filing of the complaint and the complainant does not agree in writing to an extension, then the complaint shall be referred to a review panel comprised of one to three persons selected by the Board.
- B. The review panel shall issue a final determination on the complaint within sixty (60) days of the referral. The review panel shall make its determination, on the record, of the hearing provided for in any proceeding that was held before the panel and shall not conduct any further proceedings, if the hearing was held and completed. If the hearing was not held or completed, then the review board shall conduct the hearing as prescribed in these regulations.

### **3.10 Publication of Decisions**

- A. All final determinations shall be published and retained in the permanent archival records of the Board by attaching said determination to the meeting minutes of the Board that is next held after the final determination was issued.
- B. This Part is adopted this day of December 2003 pursuant to the Administrative Procedures Act (R.I. Gen. Laws § [42-35-1](#), *et seq.*). By Order of the Rhode Island Board of Elections.

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**SUBCHAPTER 00 - N/A**

**PART 3 - ADMINISTRATIVE COMPLAINT PROCEDURE (410-RICR-20-00-3)**

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**Department of State**

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Department of State Date