

**RHODE ISLAND GOVERNMENT REGISTER  
PUBLIC NOTICE OF PROPOSED RULEMAKING**

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**AGENCY:** Governor's Commission on Disabilities

**RULE IDENTIFIER:** Chapter D

**REGULATION TITLE:** Grievance Procedures

**RULEMAKING ACTION:** Direct Final

**Direct Final:** If no formal objection is received on or before **April 27, 2018** the Governor's Commission on Disabilities will file the adoption without opportunity for public comment.

**TYPE OF FILING:** Repeal

**TIMETABLE FOR ACTION ON THE PROPOSED RULE:**

Public notice date 03/27/2018 and End of comment period 04/27/2018.

**SUMMARY OF PROPOSED RULE:** This regulation is being repealed and replaced by 525-RICR-10-00-02 Inclusion in State Government Employment, Programs and Activities as part of consolidation and codification of Commission regulations regarding the coordination of state government compliance with state and federal disability rights laws and regulations.

**COMMENTS INVITED:**

All interested parties are invited to submit written or oral comments concerning the proposed regulations by **April 27, 2018** to the addresses listed below.

**ADDRESSES FOR PUBLIC COMMENT SUBMISSIONS:**

**Mailing Address:** Governor's Commission on Disabilities  
John O. Pastore Center, 41 Cherry Dale Court  
Cranston, RI 02920-3049

**Email Address:** [bob.cooper@gcd.ri.gov](mailto:bob.cooper@gcd.ri.gov)

**WHERE COMMENTS MAY BE INSPECTED:**

**Mailing Address:** Governor's Commission on Disabilities  
John O. Pastore Center, 41 Cherry Dale Court  
Cranston, RI 02920-3049

**FOR FURTHER INFORMATION CONTACT:**

ATTN: Bob Cooper, Executive Secretary Governor's Commission on Disabilities  
John O. Pastore Center, 41 Cherry Dale Court  
Cranston, RI 02920-3049  
(401) 462-0100 or [bob.cooper@gcd.ri.gov](mailto:bob.cooper@gcd.ri.gov)

**SUPPLEMENTARY INFORMATION:**

**Regulatory Analysis Summary and Supporting Documentation:**

The fiscal impact to both the state and city or town is based on the 2010 US Department of Justice: Disability Rights Section of the Civil Rights Division's Final Regulatory Impact Analysis of the Final Revised Regulations Implementing Titles II and III of the ADA, including Revised ADA Standards for Accessible Design Final Report.

The Final RIA also acknowledges that the final rules will undoubtedly confer substantial and important benefits that cannot be readily quantified or monetized. In this sense, the

regulatory assessment must be considered conservative since it almost certainly understates the overall value of the final rules to society. Few would doubt, for example, that the psychological and social impacts of the ability of persons with disabilities to fully participate in public and commercial activities without fear of discrimination, embarrassment, segregation, or unequal access have significant value. Society generally will also experience benefits from the final rules that are difficult to monetize, including: reduced administrative costs (from harmonization of the final rules with model codes); increased worker productivity (due to greater workplace accessibility); improved convenience for persons without disabilities (such as larger bathroom stalls used by parents with small children); and, heightened option and existence values. In addition to unquantifiable benefits, there may be negative consequences and costs as well, such as costs if an entity defers or foregoes alterations, potential loss of productive space during additional required modifications to an existing facility, or possible reduction in facility value and losses to some individuals without disabilities due to the new accessibility requirements.

Small Businesses must comply with this regulation. Any person or entity doing business in the state, any person or entity regulated, by the state or having received financial assistance from the state, or under any program or activity conducted by the state, its agents or any entity doing business with the state. RI Gen. Laws § 42-87-2. Discrimination prohibited.

**Authority for This Rulemaking:** R.I. Gen. Laws § 42-51-6(3) Governor's Commission on Disabilities - Duties.

**Regulatory Findings:**

In the development of the proposed adoption consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information.

**The Proposed Repeal:**

The Governor's Commission on Disabilities proposes to repeal Chapter D:



RHODE ISLAND AND PROVIDENCE PLANTATIONS  
Executive Department  
**GOVERNOR'S COMMISSION ON  
DISABILITIES**

John O. Pastore Center, 41 Cherry Dale Court  
Cranston, RI 02920-3049

[voice] (401) 462-0102 [tty] via RI Relay 711 [fax] 462-0106  
[e-mail] [bcooper@gcd.ri.gov](mailto:bcooper@gcd.ri.gov) [website] [www.disabilities.ri.gov](http://www.disabilities.ri.gov)

**RULES AND REGULATIONS PERTAINING TO**

**Chapter D Grievance Procedures Regarding Complaints Alleging Discrimination  
by a State Agency on the Basis of Disability**

Rule proposed on August 25, 1992  
Public Hearing on September 21, 1992  
Adopted on September 26, 1992  
Effective on October 15, 1992  
Technical Revisions on October 10, 1997  
Advertised October 21, 1999  
Public Hearing November 22, 1999  
Adopted on December 13, 1999  
Effective on January 20, 2000  
Technical Amendments Adopted September 13, 2003  
Technical Amendments proposed August 11, 2009  
Technical Amendments adopted on September 21, 2009  
Effective on October 28, 2009

**TO BE REPEALED**

**Compilers Notes:**

Red or Blue text indicates a link to an endnote or web link, move mouse to colored text and click to open.  
All forms references are available on line at [www.disabilities.ri.gov](http://www.disabilities.ri.gov)

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## **I. STATUTORY AUTHORITY**

RI GL 42-51-6 (3) Governor's Commission on Disabilities – Duties<sup>1</sup>, RIGL 42-51-6.2 Committees and mediation teams<sup>2</sup> and RIGL 42-51-9 Definitions<sup>3</sup>

## **II. DEFINITIONS**

- A. “Complainant” means the individual or organization alleging non-compliance by a state agency with federal or state laws, which protect the rights of individuals with disabilities.
- B. “Respondent” means the state agency, which allegedly failed to comply with federal or state laws, which protect the rights of individuals with disabilities.
- C. “The Commission” shall mean the [Governor's Commission on Disabilities](#)<sup>4</sup>.
- D. “State agency”<sup>5</sup> is defined in RI General Law 42-51-9 (3).
- E. “Commissioner” shall mean a member of the Governor's Commission on Disabilities appointed by the Governor, pursuant to RIGL 42-51-2.
- F. “Mediation team” shall mean the 2 person teams created by the Commission, pursuant to RIGL 42-51-6.2 to attempt by informal methods of conference, persuasion, and conciliation, to induce compliance with matters within the jurisdiction of the commission.

## **III. FILING COMPLAINTS**

A. The complainant must file with the Commission a Disability Rights Complaint and Mediation Request GCD Form D 1 for complaints concerning employment discrimination) or D 2 for complaints concerning government services discrimination) or the complainant may file a taped audio complaint. Every complaint must include the following information:

1. A description of the alleged discriminatory act(s) and the date(s) of occurrence;
2. The state agency and all possible state employees involved; and
3. Possible resolution(s).

B. Within two (2) business days, the Commission's Assistant ADA Coordinator (Mediation) will:

1. Determine the deadline for filing a formal complaint/suit and advise the complainant of the federal & state enforcement agencies' deadline(s) and the time it could take to mediate the complaint; and
- a) Forward the complaint to the respondents' ADA Coordinator identified therein.

## **IV. RESPONDENT AGENCY'S INVESTIGATION AND RESOLUTION**

A. The respondent's ADA Coordinator will contact the complainant and attempt to resolve the complaint within fifteen (15) business days of receipt of a complaint; the Respondent's ADA Coordinator shall report the status of the complaint to the Commission as follows:

1. When the parties have an agreement that resolves the complaint: the Respondent's ADA Coordinator shall submit to the Commission the Mediation Status Report GCD Form D 6 (signed by all parties). The parties shall also execute in duplicate a written agreement, which sets forth the specific stipulations of the settlement, and each party shall retain a signed copy of that agreement. However that agreement shall not be provided to the Commission.
2. When the parties have agreed to an extension of time to reach possible agreement on a resolution: the Respondent's ADA Coordinator shall submit to the Commission the Mediation Status Report, signed by all parties, which sets a new deadline.
3. When the parties cannot resolve the complaint: the Respondent's ADA Coordinator shall submit to the Commission the Agency Level Mediation Report GCD D 7, and the matter shall be referred to mediation or dismissed by the Commission.

#### **V. MEDIATION OR DISMISSAL**

- A. Based on the Agency Level Mediation Report, submitted by the respondent's ADA Coordinator, the Commission's Chairperson or Executive Secretary may dismiss the complaint without prejudice, in which case the Commission shall advise the complainant about the available procedures for filing a charge with state and/or federal enforcement agencies.
- B. If the Commission does not dismiss the complaint, the Commission shall mail all parties the Mediator Selection GCD Form D 5.
  1. Requesting the parties identify which potential mediators listed are unacceptable, and return the form within twenty-five (25) business days; and
  2. If one or more of the parties has not returned the Mediator Selection Form within twenty-five (25) business days of its mailing, then the Commission shall close the complaint and advise the complainant of the enforcement process.
- C. Upon receipt of the Mediator Selection Form from the complainant and respondent, the Commission will appoint two (2) volunteer (trained) mediators: one (1) from a state agency (not involved in the dispute) and one (1) from the disability community, who are acceptable to all parties involved. In the event that there are not two mediators acceptable to all the parties, the Commission will select the two (2) least objectionable mediators.
- D. The mediation team shall meet with all parties to assist them to resolve the complaint. The mediation team may meet separately, with each party if necessary or appropriate.
- E. The mediation team shall attempt to resolve the complaint within twenty-five (25) business days following their appointment. The parties may extend this twenty-five (25) day deadline by agreeing to additional mediation sessions. The mediation team shall file a Mediation Status Form on their efforts with the Commission, at the end of each mediation session, which the parties shall initial.
- F. If the parties resolve the complaint during mediation, they shall execute in duplicate an agreement stipulating the terms of the resolution. The mediation team shall sign the

agreement as witnesses. Each party shall retain a signed copy of the agreement. The parties shall not submit a copy of the agreement to the Commission. However, the mediation team shall complete the final Mediation Status Form indicating the type of resolution (initialed by all parties) and submit to the Commission.

G. Mediations conducted under the auspices of the Commission shall conform to the mediation confidentiality provisions of RIGL 9-19-44<sup>6</sup>.

## **VI. FORMS**

The Commission's staff shall prepare and revise the forms referenced above, as necessary.

## **VII. ENDNOTES**

These endnotes are the text of several general laws and are provided for clarification and are not part of the regulation. They are subject to revision, as amended by the General Assembly.

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<sup>1</sup> **RIGL 42-51-6(3) Governor's Commission on Disabilities – Duties. –**

(3) Coordinating compliance with federal and state laws protecting the rights of individuals with disabilities by state agencies;

<sup>2</sup> **RIGL 42-51-6.2. Governor's Commission on Disabilities - Committees and mediation teams. –**

(1) The commission is authorized to create advisory committees and mediation teams to perform tasks within the jurisdiction of the commission.

(2) The commission may itself, or it may empower these committees and mediation teams to:

(i) Study the concerns of people with disabilities in reaching the maximum in independent living and human development and exercising all of the rights and responsibilities accorded to citizens of this state;

(ii) Arouse community interest in the concerns of people with disabilities;

(iii) Foster through community effort or otherwise good will among the groups and elements of the population of the state towards people with disabilities; and

(iv) Attempt by informal methods of conference, persuasion, and conciliation, to induce compliance with matters within the jurisdiction of the commission.

(3) The committees and teams may make recommendations to the commission for the development of policies and procedures in general.

(4) Advisory committees and mediation teams created by the commission shall be composed of representative citizens serving without pay, but with reimbursement for actual and necessary traveling expenses.

(5) Three (3) members of a committee constitutes a quorum for the purpose of conducting the business of that committee.

<sup>3</sup> **RIGL 42-51-9 Governor's Commission on Disabilities – Definitions**

(2) "Federal and state laws protecting the rights of individuals with disabilities" means, but is not limited to, the Americans with Disabilities Act of 1990, 42 USC § 12101 et seq.; title V of the Rehabilitation Act of 1973, 29 USC § 794; R.I. Const., art. I, § 2; the provisions of chapter 87 of title 42 and §§ 23-6-22, 37-8-15, 37-8-15.1 and 42-46-13.

(3) "State agency" means any department, division, agency, commission, board, office, bureau, council, or authority, either branch of the Rhode Island general assembly or any agency or any committee thereof, or any other agency that is in any branch of Rhode Island state government and which exercises governmental functions.

(4) "Coordinating compliance" means the authority to:

(i) Issue guidelines, directives, or instructions that are necessary to effectuate compliance with federal and state laws protecting the rights of individuals with disabilities;

(ii) Establish a grievance procedure to promptly and equitably resolve complaints of noncompliance with federal and state laws protecting the rights of individuals with disabilities involving state agencies, including the power to investigate possible discrimination and eliminate unlawful practices by informal methods of conference, conciliation, and persuasion;

(iii) Initiate complaints against any state agency that willfully fails to comply with federal and state laws protecting the rights of individuals with disabilities to the appropriate state or federal agency; and

(iv) Develop, make periodic revisions to, and oversee the implementation of a transition plan for the removal of environmental and communication barriers in state-owned facilities.

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<sup>4</sup> Governor's Commission on Disabilities  
John O. Pastore - 41 Cherry Dale Court  
Cranston, RI 02920-3049  
401-462-0100 (voice); tty via 711 and 462-0106 (fax)  
[disabilities@gcd.ri.gov](mailto:disabilities@gcd.ri.gov) (e-mail) and  
<http://www.disabilities.ri.gov> (website)

<sup>5</sup> RIGL 42-51-9 (3) see above.

**6 RIGL 9-19-44 Mediator Confidentiality In Mediation Proceedings**

“(a) All memoranda and other work product, including files, reports, interviews, case summaries and notes, prepared by a mediator shall be confidential and not subject to disclosure in any subsequent judicial or administrative proceeding involving any of the parties to any mediation in which the materials are generated; nor shall a mediator be compelled to disclose in any subsequent judicial or administrative proceeding any communication made to him or her in the course of, or relating to the subject matter of, any mediation by a participant in the mediation process. For the purposes of this section, “mediation” shall mean a process in which an impartial third party who is a qualified mediator, who lacks authority to impose a solution, helps participants reach their own agreement for resolving a dispute, whether or not a judicial action has been filed; and a “mediator” shall mean an impartial person who enters into a written agreement with the parties to assist them in resolving their dispute and who has completed at least thirty (30) hours of training in mediation, or has two (2) years of professional experience as a mediator, or has been appointed to mediate by a judicial or governmental body.

(b) This section shall not be applicable to any and all collective bargaining mediation, including but not limited to collective bargaining mediation conducted pursuant to chapters 9.1 - 9.5 and 10 of title 28 and chapter 11 of title 36.

To be Repealed