

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

AGENCY: Governor's Commission on Disabilities

RULE IDENTIFIER: Chapter E

REGULATION TITLE: E Initiation of Complaints against State Agencies that Willfully Fail to Comply with Laws Protecting the Rights of Individuals with Disabilities

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SUMMARY OF PROPOSED RULE: This regulation is being repealed and replaced by 525-RICR-10-00-02 Inclusion in State Government Employment, Programs and Activities as part of consolidation and codification of Commission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

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

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 Amendment:

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



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

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RULES AND REGULATIONS PERTAINING TO

**Chapter E Initiation of Complaints against State Agencies that Willfully Fail to
Comply with Laws Protecting the Rights of Individuals with Disabilities**

- 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
- Public Hearing November 22, 1999
- Adopted on December 13, 1999
- Effective on January 20, 2000
- Technical Amendments Adopted September 13, 2003
- Technical Amendments proposed on August 11, 2009
- Adopted on September 21, 2009
- Effective on October 28, 2009

Compilers Notes:

Red or Blue text indicates a link to an endnote or web link, move the mouse to colored text and click to open.
All forms references are available on line at www.disabilities.ri.gov

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I. STATUTORY AUTHORITY

RI GL 42-51-6 (1) and (3) Governor's Commission on Disabilities - Duties¹ and RI 42-51-9(4)(iii) and (6) Definitions².

II. DEFINITIONS

A. "Commission's investigator" means the Commission Chairperson, Executive Secretary or the designated, staff and / or Commission member assigned to conduct the investigation and persuasion of the alleged action or pending action.

B. "Respondent" means the entity(ies) alleged responsible for denying people with disabilities the opportunities to exercise all of the rights and responsibilities accorded to citizens of this state.

C. "The Commission" shall mean the [Governor's Commission on Disabilities](#)³.

D. "State agency"⁴ is defined in RI General Law 42-51-9 (3).

III. INVESTIGATION AND PERSUASION

A. Before the Commission initiates its own complaint against a state agency for failure to comply with laws protecting the rights of individuals with disabilities, the Commission's investigator shall:

1. Notify that agency of the Commission's concerns and the issues involved,
2. Investigate alleged action(s) or pending action(s) that would deny or is denying people with disabilities the opportunities to exercise all of the legal rights and responsibilities accorded to citizens of this state; and
3. Attempt to resolve the issue(s) directly with the agency through informal methods of conference, conciliation, and persuasion.

IV. THE COMMISSION AS AGGRIEVED PARTY BEFORE OTHER REGULATORY BODIES

A. The Commission and its Executive Committee may authorize and designate the Commission Chairperson, Executive Secretary, staff and / or Commission member(s) to represent the Commission:

1. As an aggrieved party or to present testimony, when
2. A matter pending before a regulatory body might deny people with disabilities the opportunities to exercise all of the legal rights and responsibilities accorded to citizens of this state.

B. The Commission's (or Executive Committee's) authorization may be for:

1. A specific matter pending before a specific regulatory body or
2. A blanket authorization encompassing a specific set of circumstances whenever those are pending before the regulatory body of competent jurisdiction.

V. COMMISSION INITIATING LEGAL ACTION

A. The Commission's investigator shall refer a charge to the Commission, when attempt to resolve the issue(s) directly with the agency through informal methods of conference, conciliation, and persuasion have been unsuccessful.

B. The charge shall state:

1. The nature of the actions taken or planned that are alleged to deny or will deny people with disabilities the opportunities to exercise all of the legal rights and responsibilities accorded to citizens of this state;
2. The results of the investigation of those actions;
3. A description of the efforts taken to forestall those actions; and
4. All responses from the respondents explaining their actions and any steps taken or proposed to overcome the effects of those actions.

C. The respondent shall be sent a copy of the charge and invited to make a presentation at the Commission's hearing. The charge must be mailed to the respondent and to each Commissioner at least fifteen (15) business days prior to the hearing, and a notice of the hearing posted in accordance with the Open Meetings law.

D. The Commission shall convene a hearing, in accordance with RIGL 42-35, when a quorum is present:

1. The charge shall be read;
2. The respondent's representative given an opportunity to respond to the charge; and
3. The Commissioners may question both the respondent's representative and the Commission's investigator.

E. The Commission may, at the completion of testimony at the hearing, by majority vote of the members present, initiate a complaint, on behalf of the state, against respondent, if the Commission finds:

1. Probable cause⁵ that a violation of state or federal laws protecting the rights of an individual(s) with disabilities has occurred or will be the result of pending action; and
2. The violation has not been corrected nor has the respondent presented a credible plan to resolve the charge.

F. The power of the Commission's Executive Committee to develop policy between meetings does not extend to the initiation of legal action against state agencies.

VI. FORMS

The Commission's staff shall prepare and revise forms, 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.

¹ RIGL 42-51-6. Governor's Commission on Disabilities – Duties.

“It shall be the duty of the commission to work in cooperation with the National Council on Disability and other interested federal, state, and local agencies, organizations, and employers in:...

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

² **RIGL 42-51-9(4) Governor’s Commission on Disabilities – Definitions.**

(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.

³ **Governor’s Commission on Disabilities**

John O. Pastore Center - 41 Cherry Dale Court

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401-462-0100 (voice); tty via 711 and 462-0105 (fax)

disabilities@gcd.ri.gov (e-mail) and

<http://www.disabilities.ri.gov> (website)

⁴ **RIGL 42-51-9(3) Governor’s Commission on Disabilities – Definitions.**

(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.

⁵ Using the standard adopted by the RI Commission for Human Rights

To be Repealed