

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

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

**RULE IDENTIFIER:** Chapter I

**REGULATION TITLE:** Reasonable Accommodations

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**SUMMARY OF PROPOSED RULE:** This regulation is being repealed and replaced by 525-RICR-10-00-02 Inclusion in State Government Employment, Programs and Activities as part of consolidation and codification of Commission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



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 I. Reasonable Accommodation Requests**

Rule proposed on December 11, 1995  
Advertised on January 15, 1996  
Adopted on March 20, 1996  
Effective on March 27, 1996  
Technical Revisions on October 10, 1997  
Advertised October 21, 1999  
Public Hearing November 22, 1999  
Adopted December 13, 1999  
Effective February 10, 2000  
Technical Amendments Adopted September 13, 2003  
Amendments proposed on August 11, 2009  
Public Hearing on September 14, 2009  
Adopted on September 21, 2009  
Effective on October 28, 2009

**COMPILER'S NOTES:**

Link to an endnote are [red super script](#) and web link are [blue](#) as below, move **b** 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>.*

## **II. STATEMENT OF PURPOSE**

A. It is the policy of the State of Rhode Island to provide reasonable accommodations or modifications for persons with disabilities<sup>2</sup> who are:

1. State employees;
2. Applicants for state employment;
3. Students at state operated schools or colleges;
4. Residents of state operated institutions;
5. Customers of state programs, services, or activities; or
6. Applicants for state services.

B. The State of Rhode Island will adhere to all applicable federal and state laws, regulations and guidelines with respect to providing reasonable accommodations or modifications as required to afford equal opportunity to qualified persons with disabilities.

C. Reasonable accommodations shall be provided in a timely and cost-effective manner. These rules and all requests for reasonable accommodation should be liberally construed. The process of considering requests for accommodations and providing reasonable accommodations must always include a process of mutual communication and consultation between the qualified individual with a disability and the agency providing the accommodation.

## **III. DEFINITIONS**

A. The definitions contained in 29 CFR 1630.2 “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act - Definitions” shall define the meaning of the following terms, when used in this regulation: “disability”<sup>3</sup>; “physical or mental impairment”<sup>4</sup>; “major life activities”<sup>5</sup>; “substantially limits”<sup>6</sup>; “has a record of such impairment”<sup>7</sup>; “is regarded as having such an impairment”<sup>8</sup>; “qualified individual with a disability”<sup>9</sup>; “essential functions”<sup>10</sup>; “reasonable accommodations”<sup>11</sup>; “undue hardship”<sup>12</sup>; “qualification standards”<sup>13</sup>; and “direct threat”<sup>14</sup>. The definitions contained in 29 CFR 1630.3 shall define the meaning of “exceptions to the definitions of “disability” and “qualified individual with a disability”<sup>15</sup> when used in this regulation.

B. The definitions contained in 28 CFR 35.104 “Nondiscrimination on the Basis of Disability in State and Local Government Services shall define the meaning of the following terms, when used in this regulation: “auxiliary aids”<sup>16</sup>; disability (see A above); “qualified individual with a disability (see A above); “public entity”<sup>17</sup> and “qualified interpreter”<sup>18</sup>, and as used in 28 CFR 35.130 (b)(7) the term “reasonable modifications”<sup>19</sup>

C. The term “Job Analysis”<sup>20</sup> shall be defined as described in the Equal Employment Opportunities Commission’s (EEOC) Technical Assistance Manual II 2.3(b) “Job Analysis and the Essential Functions of a Job”.

D. “The Commission” shall mean the [Governor’s Commission on Disabilities](#)<sup>21</sup>.

E. “State agency”<sup>22</sup> is defined in RI General Law 42-51-9 (3).

F. Central ADA Equipment Pool means the storage of auxiliary aids by the Governor’s Commission on Disabilities that is not in use as a reasonable accommodation or to provide access to a program, service, or activity.

G. Information and Assistive Technology Committee means the Governor’s Commission on Disabilities’ Information and Assistive Technology .

H. Capital Funds means:

1. General obligation bonds authorized to assure handicapped persons accessibility to state services and employment opportunities [RI PL 1980 Chapter 166; RIPL 1985 Chapter 367; or RIPL 1989 Chapter 552 (2) (a)];
2. Other general obligation bonds or other capitol projects authorized for the repair, renovation and acquisition of equipment that has been designated for projects to assure persons with disabilities access to state services and employment opportunities [RIPL 1990 Chapter 434 (3)]; or
3. Any subsequent general obligation bonds similarly authorized; or
4. RI Capital Funds or general revenue funds that have been designated for projects to assure persons with disabilities accessibility to state services and employment opportunities.

#### **IV. POSTING NOTICE / REQUESTING AN ACCOMMODATION**

A. All state agencies shall post the EEOC-P/E-1 poster in the manner described below from the EEOC’s “Technical Assistance Manual on the Employment Provisions of Title I of the Americans with Disabilities Act” 23.

B. A public entity shall make available to applicants, participants, beneficiaries, and other interested persons information regarding the provisions of [the ADA and this regulation] and its applicability to the services, programs, or activities of the public entity, and make such information available to them in such manner as the head of the entity finds necessary to apprise such persons of the protections against discrimination assured them by [the ADA and this regulation].<sup>24</sup>

C. A public entity that employs 50 or more persons shall designate at least one employee as the ADA coordinator. It will be the duty of the ADA coordinator that the agency to coordinate comply with and carry out its responsibilities under [the ADA and this regulation], including any investigation of any complaint communicated to it alleging its noncompliance with [the ADA and this regulation] or alleging any actions that would be prohibited by [the ADA and this regulation]. The public entity shall make available to all interested individuals the name, office address, and telephone number of the agency’s ADA coordinator, designated pursuant to [28 CFR 35.107(a)].<sup>25</sup>

D. Next to the EEOC-P/E-1 posters, in material distributed to applicants, participants, and beneficiaries and on bulletin boards and other conspicuous locations frequented by

the agency’s applicants, participants, beneficiaries and employees all state agencies shall post the notice “Procedure For Requesting An Individual with a Disability to Request a Reasonable Accommodation for Services/Employment From [insert agency name]” (text on the following page.)

E. Event and Examination Postings, Job Vacancy Notices, and Interview notices  
All vacancy notices, job postings, examinations, announcements of events and notification of job or client interviews shall identify the contact person for arranging reasonable accommodations for the applicant/customer who is seeking an accommodation during the interview, examination or event. The notice shall also contain the contact person’s telephone numbers and the date accommodation requests need to be called in, so the agency is able to make arrangements. Acquiring interpreters for the deaf and other services could take up to two (2) weeks. The deadline for requesting an accommodation shall be several days AFTER the agency’s notice is posted or mailed. The agency shall make reasonable efforts to fill requests that come in after the deadline.

To be Repealed

**Procedure For Requesting An  
Individual with a Disability to  
Request a Reasonable  
Accommodation for  
Services/Employment From**

[insert agency name].

A qualified individual with a disability (who meets all prerequisites for performing the essential functions of a job or eligibility requirements for services) except any that cannot be met because of a disability, is entitled to a reasonable accommodation\* if there is a reasonable accommodation that will enable the individual to perform the essential functions of a job or participate in this agency's services.

A reasonable accommodation must be an effective accommodation.

The reasonable accommodation obligation applies only to accommodations that reduce barriers to employment or agency services related to a person's disability. It does not apply to accommodations that a person with a disability may request for some other reason.

A reasonable accommodation need not be the best accommodation available; it must, however, effectively give the person with a disability an equal opportunity to be considered for a job, to perform the essential functions of a job, or to enjoy equal benefits and privileges of the job or agency services.

This agency is not required to provide an accommodation that is primarily for personal use.

\* Includes the modification of agency policies or the provision of auxiliary aids and services, such as an interpreter for the deaf, audiotapes of printed material, etc.

To request a reasonable accommodation, either related to employment at this agency or to participate in this agency's services contact either:

[insert agency's ADA Coordinator's name]

[insert mailing address]

[insert voice, tty & fax telephone numbers]

[insert e-mail address]

**Governor's Commission on  
Disabilities**

**John O. Pastore Center - 41 Cherry  
Dale Court**

**Cranston, RI 02920-3049**

**[voice] 401-462-0100 tty via 711**

**[fax] 462-0106**

**[e-mail] disabilities@gcd.ri.gov**



## V. **REASONABLE ACCOMMODATION CONSULTATION AND SELECTION**

- A. Whenever requests for reasonable accommodations are made to the Commission, it shall determine which agency is responsible, identify the agency's ADA Coordinator, provide the requesting party with a copy of these regulations and either refer the requesting party to that coordinator or assist the individual in preparing a Reasonable Accommodation Request GCD Form I-1.
- B. The agency's ADA Coordinator shall,
1. Immediately upon receiving the reasonable accommodation request:
  2. Provide the requesting party with a copy of these regulations (if the Commission has not already provided a copy);
  3. Determine if the requested accommodation is for an immediate event or activity, is only needed for a short period of time, or the requested accommodation is easy for the agency to provide.
    - a) If the requested accommodation is for an immediate event or activity, is only needed for a short period of time, or the requested accommodation is easy for the agency to provide: the ADA Coordinator shall consult with the requesting party(ies) and shall give primary consideration to the request of the individual in determining the type of accommodation provided.
    - b) The ADA Coordinator may seek documentation of the need for the accommodation, before providing it, unless the delay caused in seeking such documentation would cause the individual to be denied the opportunity to participate in or receive the benefits of the service or activity.
    - c) Prior to rejecting any request for an accommodation, the Agency's ADA Coordinator shall consult with the Commission, to identify technical resources that might assist both the agency and the individual.
  4. When the requested accommodation will be needed for an extended period of time, such as for a student's instruction/training, employee's workplace, or could require the purchase of auxiliary aids or renovation of a facility, the Agency's ADA Coordinator will:
    - a) Assist the individual (or parent /guardian) in preparing a Reasonable Accommodation Request form.
    - b) Contact the Commission to identify other state resources<sup>26</sup> that could provide technical assistance to both the individual and the agency in determining:
    - c) Determine if the individual is "A qualified individual with a disability" in relation to the services or employment being accommodated;
    - d) Identify the essential functions of the job or the essential determine purpose of the agency's service being accommodated; and
    - e) Identify the individual's specific abilities and limitations as they relate to those essential job functions or participation in the agency's services, identify the barriers to job performance / enjoyment of the agency's services and assess how these barriers could be overcome with an accommodation.



C. Confidential medical information:

1. Within ten (10) business days of receiving the Reasonable Accommodation Request Form, the agency's ADA Coordinator shall meet with the employee/applicant or customer/parent/guardian to review any medical information needed to document that the individual is "a qualified individual with a disability" in relation to the services or employment being accommodated.
2. The individual's collective bargaining agent or other persons of his/her choosing may assist the individual during this meeting.
3. The state's rehabilitation /disability services experts may assist the agency's ADA Coordinator.
4. Other agency personnel shall not participate in the review of nor have access to the individual's medical information.
5. Only medical information needed to document that the individual is a "qualified individual with a disability" and the need for the accommodation is specifically related to limitations caused by the individual's disability may be requested and retained by the agency's ADA Coordinator, in a confidential file separate from the individual's personnel or other client records.

D. Preparing an accommodation plan

- a) Within ten (10) business days of receiving all necessary medical documents, the agency's ADA Coordinator shall convene a meeting of the individual, the employee's or program / activity's supervisor, any technical assistance providers, and the employee's collective bargaining agent<sup>27</sup>. During this meeting or meetings:
  - (i) The attendees shall review the essential functions of the job or the essential purpose of the agency's service being accommodated;
  - (ii) Identify the individual's specific limitations as they relate to those essential job functions or participation in the agency's services, identify the barriers to job performance / enjoyment of the agency's services and assess how these barriers could be overcome with an accommodation; and
  - (iii) Identify potential accommodations and assess how effective each would be in enabling the individual to perform the essential functions of his/her job or participate in the agency's services.
- b) When more than one (1) meeting is required to determine the most effective accommodation, an interim accommodation plan shall be developed at the initial meeting with the concurrence of all parties. Each party shall retain a signed original of the interim accommodation plan.
- c) In developing the accommodation plan, the agency ADA Coordinator shall consider the following factors:
  - (i) If there are several effective accommodations that would provide equal opportunity, the ADA Coordinator shall consider the preference of the individual and select the accommodation(s) that best serves the needs of the individual and the agency. If more than one accommodation would be effective or if the individual would prefer to provide his or her own accommodation(s), the individual's preference should be given

first consideration. However, the agency is free to choose among effective accommodations and may choose one that is less expensive or easier to provide.

(ii) The fact that an individual is willing to provide his or her own accommodation does not relieve the agency of the duty to provide this or another reasonable accommodation should the individual for any reason be unable or unwilling to continue to provide the accommodation.

d) The reasonable accommodation plan shall include:

(i) A listing of the essential functions of the job or essential elements of the agency's services which the employee/applicant/customer is unable to perform without an accommodation;

(ii) A listing of the reasonable accommodations that will be provided and an estimated timeline for implementing each accommodation; and

(iii) Descriptions of interim steps that will be taken to assist the employee in performing the essential functions of the job or reassignment to other duties, until the reasonable accommodation plan is fully implemented.

e) The agency's ADA Coordinator shall, prepare a "Reasonable Accommodation Plan" and present it at a meeting of the attendees of the Reasonable Accommodation Consultation(s).

f) The requesting party<sup>28</sup> shall, review the proposed reasonable accommodation plan, sign and date, all the copies and check either **accept** or **reject** in the appropriate box next to her/his signature, retain one (1) signed copy and return the remaining copies of the "Reasonable Accommodation Plan":

(i) If accepting the plan - to the agency's ADA Coordinator, or

(ii) If rejecting the plan - to the Commission.

g) A signed original of the "Reasonable Accommodation Plan" shall be retained by the agency ADA Coordinator. A copy shall be sent to the Commission.

(i) If the individual accepts the reasonable accommodation plan, the agency shall implement the accommodation plan immediately, upon receipt.

(ii) No reasonable accommodation plans shall be implemented until accepted by the individual.

## **VI. AUXILIARY AIDS**

A. If the reasonable accommodation will require the obtaining of equipment or devices (auxiliary aids), the agency's ADA Coordinator shall:

1. Within 15 business days of receiving an individual's Reasonable Accommodation Request Form; and

2. Prior to the purchase of any equipment or devices check with the Commission's Central ADA Equipment Pool<sup>29</sup>, to determine if equipment in the pool would meet the need of the individual. When equipment is available from the Central ADA Equipment Pool, then the agency's ADA Coordinator will arrange to have that equipment assigned to the qualified individual.

C. Auxiliary Aids

1. The agency will obtain or modify that equipment or devices utilizing operating funds.
2. Taking into account the preference of the qualified individual the agency's ADA Coordinator shall recommend the accommodation that best serves the needs of the qualified individual and the agency.
3. The agency's administrator will arrange for its purchase, immediately.

#### E. MAINTENANCE, TRAINING, USE OF AUXILIARY AIDS

The agency shall be responsible for all maintenance of, repairs to, and consumables used in the operations of auxiliary aids, along with any specialized training of personnel in the operation of the auxiliary aids.

#### F. DISPOSAL OF AUXILIARY AIDS

##### 1. Transfer of the Qualified Individual with an Auxiliary Aid

- a) The auxiliary aid shall be transferred with the qualified individual, as long as the individual remains a state employee or consumer of state services and the auxiliary aid is still required as a reasonable accommodation.
  - b) If the auxiliary aid was purchased by the agency and
    - (i) The qualified individual's new position, is not under the control of the agency that purchased the auxiliary aid and
    - (ii) The auxiliary aid is not required as a reasonable accommodation for another employee/consumer, then
    - (iii) The purchasing agency shall arrange for the auxiliary aid to be declared "surplus property" in accordance with the surplus property regulations. The title of that auxiliary aid shall be transferred to the new agency. The original agency shall be reimbursed by the new agency for the current value of the auxiliary aid.
  - c) If the auxiliary aid was purchased by the state Central ADA Equipment Pool (and not the agency) then the agency (at the time the auxiliary aid was purchased) will notify the Governor's Commission on Disabilities' Central ADA Equipment Pool that the qualified individual and the auxiliary aid have been transferred to the new agency.
- ##### 2. The qualified individual leaves state employment or is no longer a consumer of state services:
- a) If the auxiliary aid was purchased by an agency, then the agency shall arrange for the auxiliary aid to be declared "surplus property" in accordance with the surplus property regulations and transfer title of that auxiliary aid to the Central ADA Equipment Pool.
  - b) If the state Central ADA Equipment Pool (and not the agency) purchased the auxiliary aid and the qualified individual leaves state employment the auxiliary aid shall be transferred to the Central ADA Equipment Pool to be recycled.

### **VII. REJECTING A REASONABLE ACCOMMODATION REQUEST**

- A. The agency's ADA Coordinator may reject an individual's request for a reasonable accommodation for the following reasons:

1. The individual is not an individual with a disability;
2. The individual is able without an accommodation to:
  - a) Perform the essential functions of the job or
  - b) Participate in and /or benefit from the service or activity in an equally effective manner as individuals without disabilities,
3. The individual's request for a reasonable accommodation is primarily for the personal benefit of that individual; or
4. The individual's request for a reasonable accommodation would impose an undue hardship on the operations of the agency and there is no alternative reasonable accommodation.

B. The agency's ADA Coordinator shall, within fifteen (15) business days of receiving all medical documentation requested (see V B above) or following the last meeting to "prepare a reasonable accommodation plan (see V C above):

1. Notify the requesting party of the rejection of their request for a reasonable accommodation, indicating which of the above reasons is the basis of the rejection Reasonable Accommodation Rejection GCD Form I-2; and
2. Forward to the Governor's Commission on Disabilities a copy of that notification.

#### **VIII. NON-SUPPLANTING, IMPACT ON BENEFITS**

1. This regulation addresses the State of Rhode Island's obligation to provide reasonable accommodations and modifications, including auxiliary aids, to beneficiaries with disabilities of its services, programs, and activities, only when the auxiliary aid is needed to ensure accessibility to and usability of programs, services, and or activities.
2. The regulation also addresses the State of Rhode Island's obligation to provide auxiliary aids, only as a reasonable accommodation to an employee with a disability. This regulation does not supplant or relieve the obligation of any State agency to provide auxiliary aids (equipment or devices) under any other law or regulation.

#### **IX. OTHER GCD REGULATIONS – FINANCIAL ASSISTANCE TO STATE AGENCIES IN PROVIDING REASONABLE ACCOMMODATIONS – RESOLVING DISPUTES**

A. Communication Services – Interpreters, Captioning, Braille, Tape Or Other Non-Print Documents

See the Commission's Procedural Regulation Chapter G Effective Communications, for agency obligations for providing interpreters for the deaf or computer assisted real-time captioning and converting text documents into Braille, audiotapes, etc.

B. Structural Renovations

See the Commission's Procedural Regulation Chapter F Accessibility of State and State Funded Programs and Activities for arranging for structural renovations.

C. Discrimination Complaints/Appealing the ADA Coordinator's Decision

See the Commission's Procedural Regulation Chapter D Grievance Procedures Regarding Complaints Alleging Discrimination by a State Agency on the Basis of Disability for resolving disputes regarding reasonable accommodation plans.

## **X. FORMS**

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

## **XI. 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. 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;

### **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.

<sup>2</sup> 28 CFR 35.130 (b) (7); (e) or (f) and 28 CFR 35.160.

<sup>3</sup> 29 CFR 1630.2 (g) "Disability" means, with respect to individuals, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.

<sup>4</sup> 29 CFR 1630.2 (h) The phrase physical or mental impairment means—

- (1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine; or
- (2) Any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

<sup>5</sup> 29 CFR 1630.2 (i) Major Life Activities means functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

<sup>6</sup> 29 CFR 1630.2 (j) Substantially limits --

(1) The term substantially limits means:

- (i) Unable to perform a major life activity that the average person in the general population can perform; or
- (ii) Significantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition manner, or duration under which the average person in the general population can perform that same major life activity.

(2) The following factors should be considered in determining whether an individual is substantially limited in a major life activity:

- (i) The nature and severity of the impairment;
- (ii) The duration or expected duration of the impairment; and
- (iii) The permanent or long term impact, or the expected permanent or long-term impact of or resulting from the impairment.

(3) With respect to the major life activity of working --



(i) The term substantially limits means significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes as compared to the average person having comparable training, skills and abilities. The inability to perform a single, particular job does not constitute a substantial limitation in the major life activity of working.

(ii) In addition to the factors listed in paragraph (j)(2) of this section, the following factors may be considered in determining whether an individual is substantially limited in the major life activity of “working”:

(A) The geographical area to which the individual has reasonable access;

(B) The job from which the individual has been disqualified because of an impairment and the number and types of jobs utilizing similar training, knowledge, skills or abilities, within that geographical areas, from which the individual is also disqualified because of the impairment (class of jobs); and/or

(C) The job from which the individual has been disqualified because of an impairment, and the number and types of other jobs not utilizing similar training, knowledge, skills or abilities, within that geographical area, from which the individual is also disqualified because of the impairment (broad range of jobs in various classes).

<sup>7</sup> 29 CFR 1630.2 (k) Has a record of such impairment means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

<sup>8</sup> 29 CFR 1630.2. (l) Is regarded as having such an impairment means:

(1) Has a physical or mental impairment that does not substantially limit major life activities but is treated by a covered entity as constituting such limitation;

(2) Has a physical or mental impairment that substantially limits major life activities only as result of the attitudes of others toward such impairment; or

(3) Has none of the impairments defined in paragraphs (h) (1) or (2) of this section but is treated by a covered entity as having a substantially limiting impairment.

<sup>9</sup> 29 CFR 1630.2 (m) Qualified individual with a disability means an individual with a disability who satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position. (See section 1630.3 for exceptions to this definition).

<sup>10</sup> 29 CFR 1630.2 (n) Essential functions (1) In general the term "essential functions" means the fundamental job duties of the employment position the individual with a disability holds or desires. The term "essential functions" does not include the marginal functions of the position.(2) A job function may be considered essential for any of several reasons, including but not limited to the following:(i) The function may be essential because the reason the position exists is to perform that function;(ii) The function may be essential because of the limited number of employees available among whom the performance of that job function can be distributed; and/or(iii) The function may be highly specialized so that the incumbent in the position is hired for his or her expertise or ability to perform the particular function.(3) Evidence of whether a particular function is essential includes, but is not limited to:(i) The employer's judgment as to which functions are essential;(ii) Written job descriptions prepared before advertising or interviewing applicants for the job;(iii) The amount of time spent on the job performing the function;(iv) The consequences of not requiring the incumbent to perform the function;(v) The terms of a collective bargaining agreement;(vi) The work experience of past incumbents in the job; and/or(vii) The current work experience of incumbents in similar jobs.

<sup>11</sup> 29 CFR 1630.2 (o) Reasonable accommodation. (1) The term reasonable accommodation means: (i) Modifications or adjustments to the services, programs, or activities or to the manner or circumstances under which services, programs or activities are customarily delivered, that result in making its services, programs, or activities readily accessible to and usable by individuals with disabilities; or (ii) Modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position; or (iii) Modifications or adjustments that enable the State of Rhode Island's employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities. (2) Reasonable accommodations may include but is not limited to: (i) Making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and (2) job restructuring; part-time or modified work schedules; reassignment to a vacant position; acquisition or modifications of equipment or devices; appropriate adjustment or modifications of examinations, training materials, or policies; the provision of qualified readers or interpreters; and other similar accommodations for individuals with disabilities.(3) To determine the appropriate reasonable accommodation it may be necessary for the covered entity to initiate an informal, interactive process with the qualified individual with a disability in need of the accommodation. This process should identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations.

<sup>12</sup> 29 CFR 1630.2 (p) Undue hardship (1) In general "Undue hardship" means, with respect to the provision of an accommodation, significant difficulty or expense incurred by a covered entity, when considered in light of the factors set forth in paragraph (p)(2) of this section.(2) Factors to be considered. In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include:(i) The nature and net cost of the accommodation needed under this part, taking into consideration the availability of tax credits and deductions, and/or outside funding;(ii) The overall financial resources of the facility or facilities involved in the provision of the reasonable

accommodation, the number of persons employed at such facility, and the effect on expenses and resources;(iii) The overall financial resources of the covered entity, the overall size of the business of the covered entity with respect to the number of its employees, and the number, type and location of its facilities;(iv) The type of operation or operations of the covered entity, including the composition, structure and functions of the workforce of such entity, and the geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the covered entity; and(v) The impact of the accommodation upon the operation of the facility, including the impact on the ability of other employees to perform their duties and the impact on the facility's ability to conduct business.

<sup>13</sup> 29 CFR 1630.2 (q) Qualification standards means the personal and professional attributes including the skill, experience, education, physical, medical, safety and other requirements established by a covered entity as requirements which an individual must meet in order to be eligible for the position held or desired.

<sup>14</sup> 29 CFR 1630.2 (r) Direct Threat means a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation. The determination that an individual poses a "direct threat" shall be based on an individualized assessment of the individual's present ability to safely perform the essential functions of the job. This assessment shall be based on a reasonable medical judgment that relies on the most current medical knowledge and/or on the best available objective evidence. In determining whether an individual would pose a direct threat, the factors to be considered include: (1) The duration of the risk; (2) The nature and severity of the potential harm; (3) The likelihood that the potential harm will occur; and (4) The imminence of the potential harm.

<sup>15</sup> 29 CFR 1630.3 Exceptions to the definition of "Disability" and "Qualified Individual with a Disability".

(a) The terms disability and qualified individual with a disability does not include individuals currently engaging in the illegal use of drugs, when the employer acts on the basis of such use.

(1) Drug means a controlled substance as defined in schedules I through V of Section 202 of the Controlled Substances Act (21 U.S.C. 812).

(2) Illegal use of drugs means the use of drugs the possession or distribution of which is unlawful under the Controlled Substances Act, as periodically updated by the Food and Drug Administration. This term does not include the use of a drug taken under the supervision of a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

(b) However, the terms disability and qualified individual with a disability may not exclude an individual who;

(1) Has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in the illegal use of drugs; or

(2) Is participating in a supervised rehabilitation program and is no longer engaging in such use;

(3) Is erroneously regarded as engaging in such use, but is not engaging in such use or

(c) It shall not be a violation of this part for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in paragraph (b)(1) or (2) of this section is no longer engaging in the illegal use of drugs. (See section 1630.16(c) Drug testing).

(d) Disability does not include:(1) Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;(2) Compulsive gambling, kleptomania, or pyromania; or(3) Psychoactive substance use disorders resulting from current illegal use of drugs.(e) Homosexuality and bisexuality are not impairments and so are not disabilities as defined in this part.

<sup>16</sup> 28 CFR 35.104 and 29 CFR 1630.2 Auxiliary aids include but are not limited to—

telephone handset amplifiers, assistive listening devices, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning telecommunications devices for deaf persons (TTY's), videotext displays, or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

optical readers, taped texts, audio recordings, Brailled materials, large print materials, or other effective methods of making visually delivered materials available to individuals with visual impairments; or

acquisition or modification of equipment or devices and necessary software and peripherals.

This regulation does not require the public entity to provide to individuals with disabilities personal devices. Personal devices include wheelchairs, individually prescribed prescription eyeglasses or hearing aids; or readers for personal use or study.

<sup>17</sup> 28 CFR 35.104 "public entity" means –

Any State or local government;

Any department, agency, special purpose district, or other instrumentality of a State or States or local government; and  
The National Railroad Passenger Corporation, and any commuter authority (as defined in section 10-3(8) of the Rail Passenger Service Act).

<sup>18</sup> 28 CFR 35.104 "Qualified interpreter means an interpreter who is able to interpret effectively, accurately, and impartially both receptively and expressively, using any necessary specialized vocabulary.

<sup>19</sup> 28 CFR 35.130 (b)(7) A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program or activity.



<sup>20</sup> EEOC's ADA Technical Assistance Manual II. 2.3(b) To identify essential job functions under the ADA, a job analysis should focus on the purpose of the job and the importance of actual job functions in achieving this purpose. Evaluating "importance" may include consideration of the frequency with which a function is performed, the amount of time spent on the function, and the consequences if the function is not performed. The analysis may include information on the work environment (such as unusual heat, cold, humidity, dust, toxic substances or stress factors). The job analysis may contain information on the manner in which a job currently is performed, but should not conclude that ability to perform the job in that manner is an essential function, unless there is no other way to perform the function without causing undue hardship. A job analysis will be most helpful for purposes of the ADA if it focuses on the results or outcome of a function, not solely on the way it customarily is performed.

<sup>21</sup> Governor's Commission on Disabilities  
John O. Pastore Center - 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>22</sup> RIGL 42-51-9 (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.

<sup>23</sup> EEOC ADA Technical Assistance Manual III. 3.6 "When is an Employer Obligated to Make a Reasonable Accommodation?"

An employer is obligated to make an accommodation only to the known limitations of an otherwise qualified individual with a disability. In general, it is the responsibility of the applicant or employee with a disability to inform the employer that an accommodation is needed to participate in the application process, to perform essential job functions or to receive equal benefits and privileges of employment. An employer is not required to provide an accommodation if unaware of the need.

However, the employer is responsible for notifying job applicants and employees of its obligation to provide accommodations for otherwise qualified individuals with disabilities.

The ADA requires an employer to post notices containing the provisions of the ADA, including the reasonable accommodation obligation, in conspicuous places on its premises. Such notices should be posted in employment offices and other places where applicants and employees can readily see them. EEOC provides posters for this purpose. (See Chapter I for additional information on the required notice.)

Information about the reasonable accommodation obligation also can be included in job application forms, job vacancy notices, and in personnel manuals, and may be communicated orally. An applicant or employee does not have to specifically request a "reasonable accommodation" but must only let the employer know that some adjustment or change is needed to do a job because of the limitation caused by a disability."

<sup>24</sup> 28 CFR 35.106 Notice.

<sup>25</sup> 28 CFR 35.107 (a) Designation of responsible employee

<sup>26</sup> When potential accommodations affects: existing collective bargaining agreements through the restructuring of a job by reallocating or redistributing of marginal job functions, the altering when or how an essential job function is performed; or the reassignment to a vacant position within the control of the agency.- the Department of Administration's Office of Labor Relations and the agency's collective bargaining unit the employment of an aide or other personnel, on a continuous or long term basis; or the reassignment to a vacant position, not under the control of the agency- the Department of Administration's Office of Personnel Administration the purchase or modification of equipment or devices (auxiliary aids) or renovation of facilities- the Governor's Commission on Disabilities the return to work of an employee collecting workers' compensation benefits - the Department of Administration, Division of State Employees Workers' Compensation.

<sup>27</sup> Whenever a collective bargaining unit represents the employee and potential accommodations will effect the terms and conditions of employment.

<sup>28</sup> And the collective bargaining representative (if an attendee)

<sup>29</sup> Not wheelchairs or other assistive devices for personal use.