

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

AGENCY: Governor's Commission on Disabilities

RULE IDENTIFIER: Chapter L

REGULATION TITLE: Mediation of complaints alleging discrimination on the basis of disability by a non-state agency

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SUMMARY OF PROPOSED RULE: This regulation is being repealed and replaced by 525-RICR-10-00-04 Investigation and Hearing of Complaints as part of consolidation and codification of Commission regulations regarding the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 Repeal:

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



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

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RULES AND REGULATIONS PERTAINING TO

**Chapter L Mediation of Complaints Alleging Discrimination on the Basis of
Disability by a Non-State Agency**

Advertised October 21, 1999
Public Hearing November 22, 1999
Amendment adopted November 22, 1999
Effective December 27, 1999
Technical Amendments Adopted on September 13, 2002
Technical Amendments proposed on August 11, 2005
Adopted on September 21, 2009
Effective on October 28, 2009

Compilers Notes:

Red or Blue text indicates a link to a document or web link, move **⌘** to colored text and click to open.
All forms references are available on file at www.disabilities.ri.gov

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I. STATUTORY AUTHORITY

RI GL 42-51-6(d) Governor's Commission on Disabilities – Duties¹, RI GL 42-51-6.2 Committees and mediation teams² and RI GL 42-51-9(4)(ii) Definitions³

II. POLICY

A. The Governor's Commission on Disabilities provides a mediation service to assist parties who voluntarily chose to utilize that service to resolve allegations of discrimination on the basis of disability. The mediators are volunteers from the business community, disability community and non-profit sector. Mediation Teams are used to ensure impartiality, with each party given the right to exclude potential mediators, which are not acceptable. At any point during mediation either party may withdraw.

B. 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 in mediation 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.

C. A more formal system for resolving disability discrimination complaints against state agencies has also been established. See Commission regulation Chapter D.

III. DEFINITIONS

A. "The Commission" shall mean the [Governor's Commission on Disabilities](#)⁴.

B. "Complainant" means the individual or organization that has filed the complaint on GCD Forms D 1 (Employment), D 2 (Government Services), D 3 (Public Accommodations), or D 4 (Housing and/or Credit).

C. "Non-state agency" means any public and private agencies, businesses, and citizens other than 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.

D. "Responder" means the entity(ies) the complainant named on GCD forms D 1 (Employment), D 2 (Government Services), D 3 (Public Accommodations), or D 4 (Housing and/or Credit) as responsible for the alleged discrimination on the basis of disability.

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.

IV. FILING COMPLAINTS

A. A formal written (or audio taped) complaint on a Disability Rights Complaint and Mediation Request GCD Form D 1 (Employment), D 2 (Government Services), D 3 (Public Accommodations), or D 4 (Housing and/or Credit) must be filed with the Governor's Commission on Disabilities.

1. Describing the nature of the discriminatory act(s) and the date(s) of occurrence;
2. Identifying the non-state agency and if possible employees who instigated the discriminatory act(s) and information about the act(s); and
3. Recommend possible resolution(s).

B. Within two (2) business days, the Commission's staff 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;
2. Inform respondent of the complaint and the willingness of the complainant to attempt mediation, invite the respondent to enter into mediation, and
3. Mail all parties the Mediator Selection GCD Form D 5, requesting the parties identify which potential mediators listed are unacceptable, and return the form within twenty-five (25) business days.

C. When the complainant(s) and respondent(s) involved in a disability discrimination complaint pending before another regulatory body voluntarily agree to utilize the Commission's mediation service, the Commission shall mail all parties the Mediator Selection Form, requesting the parties identify which potential mediators listed are unacceptable, and return the form within twenty-five (25) business days.

V. MEDIATION OR DISMISSAL

A. Upon receipt of the Mediator Selection Form from the complainant and respondent, the Commission will appoint two (2) volunteer (trained) mediators, one (1) from the business community 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.

B. If one or more of the parties declines mediation or has not returned the Mediator Selection Form within twenty-five (25) business days of its mailing, then the Commission shall close the complaint and so advise all the parties.

C. The mediation team shall meet with all parties, either jointly or separately, in an effort to promptly and equitably resolve the complaint. If the mediators are unable to resolve the complaint, within twenty-five (25) business days following their appointment, the mediation team shall file a Mediation Status GCD Form D 6 on their efforts with the Commission. All the parties may extend this (25-day) deadline by agreeing to additional mediation sessions (initialed by all parties).

D. If successful, all parties will execute in duplicate an agreement stipulating the actions agreed to by the parties, that the mediators shall witness.

1. A copy of the agreement shall not be submitted to the Commission; only the final Mediation Status Form indicating the type of resolution (initialed by all parties) shall be submitted to the Commission.

2. In mediations of complaints initially filed with another regulatory body, that other regulatory body might require a copy of both the final Mediation Status Form and the agreement. The Commission will assist the parties transmit any required documentation to other regulatory bodies.

E. All mediation shall be conducted in accordance with RI GL 9-19-44⁵.

VI. FORMS

The Commission's staff shall prepare and revise any 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(4) Governor's Commission on Disabilities – Duties. –

(4) Providing technical assistance to public and private agencies, businesses, and citizens in complying with federal and state laws protecting the rights of individuals with disabilities.

² 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 empower these committees and mediation teams to:

(i) Study the concerns of people with disabilities in realizing 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.

³ 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.

(5) "Providing technical assistance to public and private agencies, businesses, and citizens on complying with federal and state laws protecting the rights of individuals with disabilities" means information dissemination and training designed to encourage the voluntary compliance with laws protecting the rights of individuals with disabilities; conducting disability accessibility surveys and providing advice on how to overcome any barriers to accessibility; and a mediation service to assist parties who voluntarily chose to utilize that service to resolve allegations of discrimination on the basis of disability.

⁴ Governor's Commission on Disabilities

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

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

⁵ **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 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 30.

TO BE REPEALED