

525-RICR-10-00-4

TITLE 525 - GOVERNOR'S COMMISSION ON DISABILITIES

CHAPTER 10 - GENERAL ADMINISTRATION

SUBCHAPTER 00 - N/A

Part 4 - Investigation and Hearing of Complaints

4.1 Statutory Authority

- A. R.I. Gen. Laws § 42-87-5(b) Civil Rights of People with Disabilities: Enforcement of Anti-Discrimination Provisions and
- B. R.I. Gen. Laws § 42-51-6.2 Committees and mediation teams

4.2 Formal Rules

- A. Scope of Rules: These rules shall govern the conduct of Adjudicatory Proceedings within the jurisdiction of the Hearing Board of the Governor's Commission on Disabilities.
- B. Construction of Rules: These rules shall be construed to further the prompt and just determination of every proceeding and in conformity with the Rhode Island Administrative Procedures Act.

4.3 Incorporation by Reference

- A. This Part hereby adopts and incorporates the Americans with Disabilities Act of 1990 (42 U.S.C. Chapter 126 (1990) Equal Opportunity For Individuals With Disabilities by reference, not including any further editions or amendments thereof and only to the extent that the provisions herein are not inconsistent with these regulations.
- B. These regulations are hereby adopt and incorporate: 29 C.F.R. § 1630 (2011) Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act (<https://www.federalregister.gov/documents/2011/03/25/2011-6056/regulations-to-implement-the-equal-employment-provisions-of-the-americans-with-disabilities-act-as>);
- C. Americans with Disabilities Act - Americans with Disabilities Act - 28 C.F.R. § 35 (2010) Nondiscrimination on the Basis of Disability in State and Local

Government Services

(https://www.ada.gov/regs2010/titleII_2010/titleII_2010_regulations.htm); and;

- D. Americans with Disabilities Act 28 C.F.R. § 36 (2010) Nondiscrimination on the Basis of Disability in Public Accommodations and Commercial Facilities (https://www.ada.gov/regs2010/titleIII_2010/titleIII_2010_regulations.htm) by reference, not including any further editions or amendments thereof and only to the extent that the provisions herein are not inconsistent with these regulations.

4.4 Definitions

- A. All the definitions in R.I. Gen. Laws §§ [42-87-1 "Definitions of disability" and 42-87-1.1 "Other definitions" and in 29 C.F.R. § 1630 \(2011\) and 28 C.F.R. § 36 \(2010\) are applicable to this part.](#)
- B. As used in this part the following words and phrases shall have the following meanings unless the context shall indicate another or different meaning or intent:
1. “Adjudicatory proceeding” means a proceeding before the Hearing Board, established in R.I. Gen. Laws § 42-51-6.1, in which the legal rights or duties of specifically named persons are determined after opportunity for a hearing.
 2. “The Commission” means the Governor’s Commission on Disabilities.
 3. “Commissioner” means a member of the Governor’s Commission on Disabilities appointed by the Governor, pursuant to R.I. Gen. Laws § 42-51-2.
 4. “Complainant” means the aggrieved individual who files a complaint with the Commission alleging a violation of the provisions of R.I. Gen. Laws Chapter 42-87 relating to the physical inaccessibility of buildings and structures.
 5. “Conciliation agreement” means a final resolution of the complaint entered into by the parties prior to the initiation of the formal adjudicatory proceeding.
 6. “Discriminate” means engaging in any act or acts prohibited by R.I. Gen. Laws Chapter 42-87, relating to the physical inaccessibility of buildings and structures.
 7. “Hearing Board” means a board of five (5) Commissioners appointed by the Commission Chairperson, pursuant to R.I. Gen. Laws § 42-51-6.1, as the Hearing Board for the purpose of conducting hearings and rendering

decisions on matters relating to the provisions of R.I. Gen. Laws Chapter 42-87 and R.I. Gen. Laws §§ 37-8-15.1 and 42-46-13 within the jurisdiction of the Commission.

8. "Party" or "Parties" means the specifically named person whose legal rights or duties are being determined in an adjudicatory proceeding, including the complainant or complainants, the respondent or respondents and other persons joined pursuant to § 4.10(E) of this Part.
9. "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization.
10. "Respondent" means a person against whom a complaint has been filed who is alleged to have violated any of the provisions of R.I. Gen. Laws Chapter 42-87 relating to the physical inaccessibility of buildings and structures.

4.5 Jurisdiction

- A. Pursuant to R.I. Gen. Laws Chapter 42-87 the Commission has jurisdiction to investigate complaints relating to alleged violations of the Civil Rights of People with Disabilities relating to the physical inaccessibility of buildings and structures.
- B. Pursuant to R.I. Gen. Laws § 42-51-6.1, the Hearing Board has jurisdiction to conduct hearings and render decisions on matters relating to the provisions of R.I. Gen. Laws Chapter 42-87, §§ 37-8-15.1, and 42-46-13.

4.6 Filing Complaints

- A. Who May File. Any individual who claims to be aggrieved by an alleged discriminatory practice may file a written complaint with the Commission. Assistance in drafting and filing complaints shall be available to complainants at the Commission office. The original complaint shall be signed and dated by the party on whose behalf the filing is made or by the party's authorized representative. The signature constitutes a certification from that individual that, to the best of his or her knowledge, the statements contained in the document are true, and, if the document has been signed by an authorized representative, that the individual has the full power and authority to do so.
- B. Contents of Complaint. The Complaint shall contain the following:
 1. The name and address of the person making the complaint and, if applicable, the name and address of the authorized representative signing the complaint;

2. The name and address of the person or entity or entities against whom the complaint is made (hereafter referred to as the respondent) and if known the names of the entity's manager and any witnesses involved;
 3. A concise statement of facts which complainant believes indicates that an unlawful discriminatory act has occurred, including a description of the physical inaccessibility of the buildings and structures and its effect on complainant's access to the benefits of any program, activity or service;
 4. The date or dates of the alleged unlawful discriminatory act or, if the alleged unlawful discriminatory act is of a continuing nature, the dates between which said continuous acts are alleged to have occurred;
 5. Relief being sought and a statement as to any proceeding or action, civil or criminal, instituted in any other forum based upon the same facts or grievances as are alleged in the complaint together with a statement as to the status or disposition of each other action or proceeding.
- C. Amendment of Complaints. A complaint is deemed filed when the Commission receives from a person a written statement sufficiently precise to identify the parties and to describe generally the alleged unlawful discriminatory act. A complaint or any part thereof may be amended to cure technical defects or omissions or to clarify and amplify allegations made therein, and such amendments relate back to the original filing date; provided, however, an amendment alleging additional acts constituting unlawful discriminatory acts not related to or arising out of the subject matter of the original complaint will be permitted only when, at the date of the amendment, the allegation could have been timely filed as a separate complaint.
- D. Other Parties in Same Complaint. Persons complaining of unlawful discriminatory acts arising out of the same transaction, occurrence, or succession or series of transactions or occurrences may join as complainants in a single complaint. All persons charged with unlawful discriminatory acts arising out of the same transaction, occurrence, or succession or series of transactions or occurrences may be joined as respondents in the same complaint.
- E. Service of Complaint. The Commission shall send notice of the filing of the complaint and a copy of the complaint to the respondent by certified mail within 10 business days of the receipt of the complaint by the Commission.
- F. Withdrawal of Complaint. The complainant may withdraw a complaint or any part of the complaint at any time prior to final disposition of the complaint. Written notice of withdrawal must be given to the Commission and to the respondent before withdrawal is effective.

4.7 Standards for Determining Violations

- A. Standards for Determining Which Elements of Public Accommodations and Commercial Facilities Must be Accessible
1. For public accommodations whose most recent certificate of occupancy for the facility was issued:
 - a. Prior to January 27, 1993 or the most recent physical alteration of the property began prior to January 27, 1992 the elements which must be accessible are those listed in 28 C.F.R. § 36.304 “Removal of barriers” 28 C.F.R. § 36.305 “Alternatives to barrier removal”, 28 C.F.R. § 36.306 “Personal devices and services”, and 28 C.F.R. § 36.308 “Seating in assembly areas” (Americans with Disabilities Act Title III Regulations issued by the US Department of Justice).
 - b. After January 26, 1993 or if the physical alteration of the property begins after January 26, 1992 the elements which must be accessible are the 28 C.F.R. § 36 Subpart D “New Construction and Alterations”.
 - c. After March 15, 2012 or if the physical alteration of the property begins after March 15, 2012 the elements which must be accessible are the ADA Standards for Accessible Design ([2010 Standards](#))”.
 2. For commercial facilities occupied prior to January 26, 1993 or last alteration of the property began prior to January 26, 1992, the elements which must be accessible are limited to those required for employees with disabilities who need reasonable accommodations that requires physical accessibility as required by 29 C.F.R. § 1630.9 (Americans with Disabilities Act Title I Regulations issued by the US Equal Employment Opportunity Commission).
 3. For commercial facilities whose first certificate of occupancy for the facility is issued:
 - a. After January 26, 1993 or if the physical alteration of the property begins after January 26, 1992 the standard for accessibility will be the State Building Code’s (and the Americans with Disabilities Act or Federal Fair Housing) Accessibility Standard for New Construction applicable at the time of construction, renovation or alteration to the portions of the building or structures cited in the complaint.

- b. After March 15, 2012 or if the physical alteration of the property begins after March 15, 2012 the elements which must be accessible are the ADA Standards for Accessible Design ([2010 Standards](#))”.
 4. For commercial facilities located in private residences, the accessibility standard will conform to 28 C.F.R. § 36.401 “New construction (b) Commercial facilities located in private residences” provision of 28 C.F.R. § 36 Subpart C.
 5. Exception for structural impracticability will conform to the provisions of 28 C.F.R. § 36.401 “New Construction (c) Exception for structural impracticability”.
 6. Elevator exemptions will conform to the provisions of 28 C.F.R. § 36.401 “New Construction (d) Elevator exemptions”.
 7. The standard for public accommodations or commercial facilities with physical alteration of the property begun after January 26, 1992, the accessibility standard will conform to 28 C.F.R. §§ 36.402 “Alterations”, 36.403 “Alterations: Path of travel”, 36.404 “Alterations: Elevator exemption”, and 36.405 “Alterations: Historic preservation”.
- B. The standard specified in 28 C.F.R. § 36.406 “Standards for new construction and alterations” is the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG), which is also the basis of the RI State Building Code’s Accessibility Standard.
- C. Standards for Public Entities
 1. No qualified individual with a disability shall, because a public entity's facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.
 2. As required by 28 C.F.R. § 35.150 “Existing facilities” , public entities in facilities whose most recent construction or alteration was commenced prior to January 27, 1992 the public entity shall operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. This does not necessarily require a public entity to make each of its existing facilities accessible to and usable by individuals with disabilities. For public entities that are recipients of federal financial assistance, the most recent construction or alteration must have

commenced prior to the effective date of their federal funding source(s) Section 504 regulations.

3. As required by 28 C.F.R. § 35.151 “New construction and alterations” each facility or part of a facility constructed by, on behalf of, or for the use of a public entity shall be designed and constructed (or altered) in such manner that the facility or part of the facility is readily accessible to and usable by individuals with disabilities, if the construction or alteration was commenced after January 26, 1992. For public entities that are recipients of federal financial assistance, the all construction or alteration commenced after the effective date of their federal funding source(s) Section 504 regulations must meet the federal accessibility standards of that funding source.
4. The accessibility standard specified in 28 C.F.R. § 35.151 is the Uniform Federal Accessibility Standards (UFAS) or with the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG). 5. Compliance with the 2010 Standards is required on new construction or alterations that were begun after March 15, 2012.
5. Public entities are also required to conform to the provisions of 28 C.F.R. § 35.163 Information and signage.

4.8 Investigation

- A. Pursuant to R.I. Gen. Laws § 42-87-5(b)(1), the Commission shall investigate all complaints relating to alleged violations of said sections relating to the physical inaccessibility of buildings and structures.
 1. The Commission’s staff will conduct an on-site inspection of the portion(s) of the buildings and structures cited in the complaint and provide the respondent and complainant a written report of the results of that on-site inspection.
 2. The inspection shall be conducted in a manner consistent with the application, exemptions, definitions, requirements, standards, and deadlines for compliance in accordance with the requirements of the Americans with Disabilities Act, 42 U.S.C., § 12101 *et seq.* and the federal regulations pertaining to the Act, 28 C.F.R. §§ 36 and 35, and 29 C.F.R. § 1630.
 3. At the completion of such an investigation the Commission’s Executive Secretary may recommend:
 - a. The staff attempt to induce compliance through conciliation;

- b. The case be referred to the Hearing Board for a full hearing; or
- c. The case be referred to the Hearing Board for dismissal of the complaint if the portion(s) of the buildings and structures cited in the complaint complies with the applicable accessibility standard.

4.9 Conciliation

- A. Prior to instituting a formal hearing, the Commission shall attempt by informal methods of conference, persuasion and conciliation, to induce compliance with R.I. Gen. Laws Chapter 42-87.
- B. If the respondent and complainant reach agreement on the steps necessary to resolve the complaint, the agreement shall be reduced to writing in the form of a Conciliation Agreement. The Conciliation Agreement shall set forth all measures to be taken by any party including provisions for affirmative and other actions and compliance reports. The agreement shall contain a statement that implementation of its provisions resolved the particular dispute between the parties but is not a representation by the Commission that the buildings or structures is physically accessible to all persons with disabilities. The agreement shall be signed by respondent, complainant and a representative of the Commission. Copies of the Agreement shall be provided to all parties.
- C. The conciliation agreement shall include a transition plan for resolving the dispute including:
 - 1. The method(s) of compliance;
 - 2. A renovation timetable; and
 - 3. Interim steps that the respondent shall undertake to ensure use of the services, activities or benefits of the respondent until the accessibility barriers have been eliminated.
- D. Compliance Reports. In disposing of a complaint or of its own investigation by means of a conciliation agreement or otherwise, the Commission may require any party to submit to it such compliance reports and allow the Commission to re-inspect the buildings and structures cited in the complaint, as the Commission deems necessary to determine compliance with the terms of conciliation.
- E. An executed conciliation agreement is a final order of the Commission. Since the Agreement is the result of settlement negotiations, if the Commission determines that there has been a failure to comply with the Agreement, it may, at its discretion, elect to petition the Superior Court for its enforcement, or if less than twelve months have passed since the alleged discriminatory acts, to refer the

initial complaint, and any amendments, to the Hearing Board for a full hearing. Nothing stated in a conciliation agreement shall be interpreted as an admission by any party of a violation of any provision of Rhode Island non-discrimination law, unless the party specifically consents to such an admission.

- F. If the complaint or any portion of the complaint cannot be resolved by these informal methods, the Commission's Hearing Board shall conduct a hearing as provided by R.I. Gen. Laws § 42-87-5(b).

4.10 Hearing

- A. The Commission's Hearing Board shall:

- 1. Hear all unresolved complaints relating to alleged violations of R.I. Gen. Laws Chapter 42-87 relating to the physical inaccessibility of buildings and structures. The Hearing Board will hear all complaint that cannot be resolved by the informal methods of conciliation or are not approved for dismissal; and
- 2. Consider all recommendations for dismissal from the Commission's Executive Secretary made pursuant to § 4.8(A)(3)(c) of this Part.

- B. Hearing Preparation

- 1. Parties to an Adjudicatory Proceeding before the Hearing Board are encouraged to engage in voluntary discovery as provided in the Rhode Island Superior Court Rules of Civil Procedure. The Rhode Island Superior Court Rules of Civil Procedure shall govern discovery except where they are inconsistent or otherwise inapplicable under this Rules.
- 2. Requests for discovery may be made any time after the Commission's Executive Secretary has recommended that a case be referred to the Hearing Board for hearing pursuant to § 4.8(A)(3)(b) of this Part above.
- 3. The Hearing Board, at its discretion, may establish limits on such discovery, including, but not limited to, when discovery shall commence and close.
- 4. Parties may make such motions as are permissible under these Rules, or pursuant to the Rhode Island Superior Court Rules of Civil Procedure. Motions made prior to the hearing must be made in writing and filed with supporting memoranda. Each motion shall set forth the grounds for the requested action by the Hearing Board. Any party opposing a motion must file an objection within seven (7) days or the objection will be deemed

waived. The Hearing Board, at its discretion, may schedule oral argument on any motion.

5. The Hearing Board may determine, at its discretion, that a prehearing conference should be conducted in any individual case. The Hearing Board may select any one of its members, or authorize the Commission staff, to conduct the prehearing conference. The authorized individual may direct the parties to appear at a specified time and place prior to the commencement of the hearing to consider:
 - a. The simplification or clarification of the issues;
 - b. The possibility of obtaining stipulations, admissions, agreements on documents, or similar agreements to avoid unnecessary proof at the hearing;
 - c. The identification of witnesses and documents to be presented at the hearing;
 - d. Such other matters as may aid in the disposition of the hearing.
 - e. The parties may jointly elect to waive a hearing and to submit its case upon the record. Submission of a case without a hearing does not relieve the parties from the necessity of providing the facts supporting their burdens, allegations or defenses.

C. Notice of Hearing

1. The Commission shall issue and cause to be served upon all parties thereto or their attorneys of record, if any, by registered or certified mail, a notice of hearing before the Hearing Board. The notice of hearing will contain a hearing date, which shall not be less than ten (10) business days after the service of such complaint and notice. A hearing shall not be deemed instituted until convened and commenced before the Hearing Board.
2. The written notice of hearing, signed by the Hearing Board Chairperson or Vice Chairperson shall include:
 - a. A statement of the time, place and nature of the hearing;
 - b. A statement of the legal authority and jurisdiction under which the hearing is to be held;

- c. A reference to the particular sections of the statutes and rules involved;
- d. A copy of the complaint filed by the complainant;
- e. The results of the Commission's investigation stating the unlawful discriminatory act that allegedly occurred and the date of its occurrence in a manner sufficient to comply with Rhode Island Administrative Procedures Act;
- f. The methods to overcoming any physical barriers proposed by the Commission's staff; and
- g. The name and telephone number of a contact person from the Commission.

D. Representation during the Hearing

- 1. Any person may appear before the Hearing Board on his or her own behalf or may be represented by legal counsel.
- 2. All persons in proceedings before the Hearing Board in a representative capacity shall conform to the standards of ethical conduct required of attorneys before the courts of Rhode Island.

E. Joinder of Parties

- 1. A person shall, whenever possible, be joined as a party in the complaint when:
 - a. In his or her absence complete relief cannot be accorded among those already existing parties, or
 - b. He or she claims an interest relating to the subject of the complaint and is so situated that the disposition of the complaint in his or her absence may:
 - (1) as a practical matter impair or impede his or her ability to protect that interest or
 - (2) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his or her claimed interest. If such a person cannot be made a party, the Hearing Board shall decide whether in equity the action should proceed or be dismissed. Any person charged with

unlawful discriminatory acts arising out of the same transaction, occurrence or succession or series of transactions or occurrences may be joined as a respondent in the same complaint.

- c. The Hearing Board may, in its discretion, join one or more complaints into a single proceeding for adjudicatory hearing.

F. Appearance of Parties

1. The complainant and the respondent shall be parties to the proceeding and may appear at the hearing, examine and cross-examine witnesses, and present evidence and argument on all issues involved.
2. Any person who has or claims an interest in the subject of the hearing and in obtaining or preventing relief against the acts or practices complained of, at the discretion of the Hearing Board, may be permitted to participate in the adjudicatory proceeding. Permission to participate shall be limited to the right to present oral or written arguments and does not make the person a party to the proceeding with any right of appeal.

G. Time of Hearings

A hearing shall be conducted at the time and place set forth in the notice of hearing, except that the time of hearing may be extended by the Hearing Board, for good cause shown, at the request of any party or the Board's Chairperson or Vice Chairperson, to such later date as the Hearing Board may determine.

H. Conduct of Hearing.

1. Hearings shall be as informal as may be reasonable and appropriate under the circumstances.
2. All parties, authorized representatives, witnesses and other persons present at a hearing shall conduct themselves in a manner consistent with the standards of decorum commonly observed in any court. Where such decorum is not observed, the Hearing Board may take appropriate action including adjournment, if necessary.
3. All parties shall have the right to present evidence, cross-examine witnesses, and make objections, motions and oral arguments. Whenever appropriate, the Hearing Board shall permit further examination as it deems necessary.

4. The Chairperson, or other designated member of the Hearing Board, shall preside over the hearing and shall administer the oath or affirmation to all witnesses.
5. All rulings and determinations of the Hearing Board during the conduct of the hearing, including admission or exclusion of evidence and on any other procedural matter, shall be made by the Chairperson, or other designated member of the Hearing Board; provided however, that any member of the Hearing Board may request a majority vote to overrule or sustain any ruling or determination of the presiding member.
6. All members of the Hearing Board may question the witnesses and examine any documents offered into evidence.
7. All hearings shall be public; provided, however, that for good cause, and only as allowed by R.I. Gen. Laws Chapter 42-46 [the Open Meetings Act], the Hearing Board may decide otherwise.

I. Procedure at Hearing

1. The Hearing Board shall follow the rules of evidence as applied in civil cases in the Rhode Island Superior Court to the extent practicable; when necessary to ascertain facts not reasonably susceptible to proof under those rules, evidence not admissible under those rules may be submitted (except where precluded by statute) if it is of a type commonly relied upon by a reasonably prudent person in the conduct of his or her affairs. The Hearing Board may receive documentary evidence in the form of copies or excerpts, if the original is not available. The Hearing Board may also take notice of judicially cognizable facts and generally recognized technical or scientific facts within the Hearing Board's specialized knowledge, as provided by the Administrative Procedures Act.
2. The Hearing Board shall have full authority to control the procedures of the hearing, to admit or exclude testimony or other evidence, to rule upon all objections and take such other actions as are necessary and proper for the conduct of such hearing including but not limited to, administering oaths, taking the testimony of any person under oath, and requiring the production for examination of any books, papers, documents or tangible things relating to any matter under investigation or in question before the Hearing Board. The Hearing Board shall conduct a hearing consistent with these Rules and Regulations.
3. The Hearing Board shall exclude irrelevant, immaterial, or unduly repetitious evidence. Parties objecting to the introduction of evidence

shall state the precise grounds of such objection at the time such evidence is offered. When objection is made to the admissibility of evidence, such evidence may be received subject to a later ruling.

4. Under appropriate circumstances, the Hearing Board may require the parties to submit sworn pre-filed direct testimony of witnesses. The direct testimony will only be accepted as part of the hearing record when the witness is presented before the Hearing Board for cross-examination.
5. During the hearing or following its conclusion, the Hearing Board may require any party, with appropriate notice to the other party, to submit additional evidence on any matter relevant to the adjudicatory hearing.
6. During the hearing or following its conclusion, the Hearing Board may require the parties to present proposed findings of fact for its consideration. In its final decision, the Hearing Board shall include a ruling on each proposed finding of fact.

J. Medical Evidence

1. There shall be a presumption that the individual filing the complaint is a "Person with a Disability".
2. If respondent challenges this presumption, then respondent must so state in writing ten (10) days prior to the scheduled commencement of the hearing. Failure to file the written challenge will be deemed a stipulation that the complainant is a Person with a Disability as defined in these Rules and in R.I. Gen. Laws Chapter 42-87.
3. If a challenge has been filed, then the complainant must present evidence at the hearing to establish that he or she is a Person with a Disability as defined in these Rules and in R.I. Gen. Laws Chapter 42-87.
4. Prior to the complainant offering such testimonial or documentary evidence, the Hearing Board shall close the hearing to the public pursuant to and in accordance with the requirements of R.I. Gen. Laws § 42-46-1 *et seq.* (the Open Meetings Law). If the complainant waives this requirement, then the evidence will be presented at open hearing and all evidence will become public record.
5. Any personal or medical records, including information relating to medical or psychological facts, offered by the complainant during the closed hearing shall not be deemed public records in accordance with the requirements of R.I. Gen. Laws § 38-2-1 *et seq.* (the Access to Public Records Act).

6. Notwithstanding the above provisions, testimonial and documentary evidence presented in closed hearing and not public record will be preserved for consideration by the Hearing Board and as part of the administrative record for the purposes of any appeal made pursuant R.I. Gen. Laws Chapter 42-35 (the Administrative Procedures Act).

K. Burdens of Proof

1. Initial Burden of Proof: The complainant shall first present his or her case. The complainant must prove by a preponderance of the evidence that the respondent has discriminated against the complainant in violation of the civil rights of individuals with disabilities caused by the physical inaccessibility of buildings and structures.
2. Staff's Burden of Production: The Commission staff shall next present evidence that an on-site inspection of the portion(s) of the buildings and structures cited in the complaint was conducted and make its recommendation for resolution of the complaint.
3. Challenging Party's Burden of Proof: If either the complainant or the respondent challenges the Commission staffs on-site inspection report and/or its recommended resolution of the complaint, then the challenging party shall have the burden to prove by a preponderance of the evidence that the report and/or the recommendation should not be adopted for one of the following reasons:
 - a. The Commission staff has incorrectly applied the standards for determining which elements of public accommodations and commercial facilities must be accessible;
 - b. The building or structure falls within the exception for structural impracticability;
 - c. An exemption applies;
 - d. The recommended resolution is not readily achievable;
 - e. Other factors should be considered by the hearing board in determining the final means to address the complaint.

L. Audio or Audio-Visual Recording/Transcript

1. Testimony and argument at the hearing shall be preserved by audio or audio-visual recording unless a party requests a stenographer under the

provisions set forth below. The audio recording of the hearing shall be available at the Commission's office for examination.

2. Any party may request that a stenographer be present at the hearing provided that the party bears the expense of the stenographer, his or her transcription, and any other incidental expenses.
3. There shall be no right to a continuance because of the unavailability of a stenographer.
4. Transcripts of the audio or audio-visual recording shall be provided by a stenographer to any party at the requesting party's own expense.

4.11 Decisions and Orders

A. Content.

1. Any decision and order of the Hearing Board issued after a hearing shall be in writing or stated in the record. The final order shall contain findings of fact and conclusions of law, separately stated.
2. All final decisions shall contain a separate notice informing the parties of the deadline for filing an appeal and state that the appeal should be made to the Superior Court pursuant to R.I. Gen. Laws § 42-87-5 and the Administrative Procedures Act.

B. Issuance of Decisions and Orders.

1. At least three Commissioners who are members of the Hearing Board must hear and participate in the decision on a case. A majority of the Hearing Board Members present and voting must agree on the decision and order.
2. If the Hearing Board determines that the respondent has not discriminated against the complainant in violation of the civil rights of individuals with disabilities caused by the physical inaccessibility of buildings and structures, then the Hearing Board shall state its findings of fact and shall issue an order dismissing the complaint as to the respondent.
3. If the Hearing Board determines that the respondent has discriminated against the complainant in violation of the civil rights of individuals with disabilities caused by the physical inaccessibility of buildings and structures, then the Hearing Board shall state its findings of fact and shall issue an order requiring the respondent to cease and desist from such practices, and to require the respondent to take any further action that will

address, remove or otherwise resolves the discrimination against the complainant.

4. At any time in its discretion, the Commission may investigate whether the terms of the order are being complied with. Upon a determination that the terms of the order are not being complied with, the Commission may take appropriate action to assure compliance including, but not limited to, petitioning the Superior Court of Rhode Island for its enforcement.
5. The Hearing Board with the consent of the respondent may enter a consent order at any time after service of a notice of hearing. Such consent orders shall include an admission of all jurisdictional facts and express waivers of further procedural steps before the Hearing Board and of the right to appeal. Consent orders shall also state that the agreement is enforceable as a final order of the Hearing Board in accordance with R.I. Gen. Laws § 42-87-5. The Consent Order may contain a statement that the agreement constitutes a settlement of the issues between the parties and is not an admission by any party that the law or regulations have been violated as alleged in the complaint.
6. Copies of orders shall be served on all parties, and their attorneys of record, if any, and where appropriate the Attorney General and the state licensing or contracting authority.
7. All orders issued by the Hearing Board after a hearing shall be filed in the office of the Commission in and shall be open to public inspection during regular office hours of the Commission.

4.12 Staff Dismissal of Complaints

- A. If the Commission staff determines that the Commission has no jurisdiction over a complaint, the complaint shall be dismissed.
- B. Administrative Closures. After notice to the complainant at his/her last known address, the Commission's staff may administratively close a case if the Commission's staff concludes:
 1. It is unable to locate the complainant;
 2. The complainant no longer wants to proceed with the complaint;
 3. The respondent has filed for bankruptcy, and:
 - a. The bankruptcy has been finalized;

- b. All assets of the respondent have been liquidated; and
 - c. Neither the respondent nor a successor is in operation;
- 4. An order appointing a receiver in respect to the respondent's business has been entered in a court of competent jurisdiction, and:
 - a. All assets of the respondent have been liquidated; and
 - b. Neither the respondent nor a successor is in operation.

4.13 Complaints Covered by Multiple Jurisdictions

A. Rhode Island Commission for Human Rights

- 1. The Governor's Commission on Disabilities shall serve notice to any complainant, if her/his complaint could also be filed with the RI Commission for Human Rights under R.I. Gen. Laws § 42-87(5)(a) or other Rhode Island nondiscrimination laws.
- 2. The Governor's Commission on Disabilities shall, upon the request of the RI Commission for Human Rights, present the results of its investigation and the recommended methods to overcoming any physical barriers, proposed by the Commission's staff to the RI Commission for Human Rights and transfer said complaint to the RI Commission for Human Rights for hearing.

B. RI Department of Elementary and Secondary Education

- 1. The Governor's Commission on Disabilities shall serve notice to any complainant, if her/his complaint could also be filed with the RI Department of Elementary and Secondary Education under R.I. Gen. Laws §§ 42-87(5)(c) or Chapter 16-39.
- 2. The Governor's Commission on Disabilities shall, upon the request of the RI Department of Elementary and Secondary Education, present the results of its investigation and the recommended methods to overcoming any physical barriers, proposed by the Commission's staff to the RI Department of Elementary and Secondary Education and transfer said complaint to the RI Department of Elementary and Secondary Education for hearing.

C. RI State Building Code Standards (and Appeals) Committee

1. The Governor's Commission on Disabilities shall serve notice to any complainant, if her/his complaint could also be filed with the RI State Building Code Standards Committee or local building official, under R.I. Gen. Laws § 23-27.3-127.1.
 2. The Governor's Commission on Disabilities shall, upon the request of the RI State Building Code Standards Committee or local building official, present the results of its investigation and the recommended methods to overcoming any physical barriers, proposed by the Commission's staff to the RI State Building Code Standards Committee or local building official, and transfer said complaint to the RI State Building Code Standards Committee or local building official, for hearing.
- D. RI Department of Labor and Training -Elevator Inspection/Occupational Safety and Health Review Board
1. The Governor's Commission on Disabilities shall serve notice to any complainant, if her/his complaint could also be filed with the RI Department of Labor and Training - Elevator Inspection Unit and/or the Occupational Safety and Health Review Board under R.I. Gen. Laws §§ 23-33-15 or 28-20-19.
 2. The Governor's Commission on Disabilities shall, upon the request of RI Department of Labor and Training - Elevator Inspection Unit and/or the Occupational Safety and Health Review Board, present the results of its investigation and the recommended methods to overcoming any physical barriers, proposed by the Commission's staff to the RI Department of Labor and Training - Elevator Inspection Unit and/or the Occupational Safety and Health Review Board and transfer said complaint to the RI Department of Labor and Training - Elevator Inspection Unit and/or the Occupational Safety and Health Review Board for hearing.

4.14 Filing for Recovery of Litigation Expenses

A. Purpose

The purpose of this rule is to carry out the statutory requirements contained in the Equal Access to Justice Act (R.I. Gen. Laws Chapter 42-92 which provides for the award of reasonable litigation expenses to prevailing parties in adjudicatory proceedings conducted by state agencies.

B. Filing Procedure

Within thirty (30) days of the conclusion of an adjudicatory proceeding relating to an enforcement action or order, or to any adjudicatory proceeding as defined in

R.I. Gen. Laws 42-92-2, a respondent may submit a claim for litigation expenses to the Hearing Board that heard the matter. For purposes of this part, the adjudicatory proceedings are deemed to be concluded on the date a final decision is issued or on the date that a Consent Order is accepted by the Hearing Board. The claim for litigation expenses shall contain a summary of the legal and factual basis for filing the claim.

C. Supporting Affidavits and Documentary Evidence

1. The respondent shall submit with his or her claim for litigation expenses, affidavits and documentary evidence presenting the legal and factual basis by which the respondent claims to be entitled to an award of litigation expenses, including facts establishing:
 - a. That the respondent is a party as defined in R.I. Gen. Laws § 42-92-2;
 - b. That the respondent has prevailed in the underlying adjudicatory proceeding;
 - c. That the Commission was not charged by statute with investigating a complaint which led to the underlying adjudicatory proceeding; and
 - d. The amount of reasonable litigation expenses as defined in R.I. Gen. Laws § 42-92-2.

D. Commission's Answer

The Commission shall provide a written answer to the claim for litigation expenses to the Hearing Board within twenty (20) days of receipt of the claim. The answer may include affidavits and documentary evidence supporting its position and other evidence in support of the position that the Commission was substantially justified in its actions.

E. Evidentiary Hearing

Within ten (10) days of filing the Commission's answer with the Hearing Board, either party may move for an evidentiary hearing on the issue of the awarding of litigation expenses. The motion shall be granted only if the moving party satisfies the Hearing Board that affidavits are an inadequate method of presenting new evidence relevant to the awarding of litigation expenses.

F. Decision

1. The Hearing Board shall issue a written decision setting forth its findings of fact and conclusions of law that underlie its conclusion whether litigation expenses should be awarded to the respondent.
2. The Hearing Board shall award reasonable litigation expenses to the respondent if the Hearing Board finds that the record in the case establishes by a preponderance of the evidence:
 - a. That the respondent is a party as defined in R.I. Gen. Laws § 42-92-2; and
 - b. That the respondent has prevailed in the underlying adjudicatory proceeding; and
 - c. The amount of reasonable litigation expenses as defined in R.I. Gen. Laws § 42-92-2, which may include a recalculation of the expenses, and a finding that some or all of the litigation expenses qualify as reasonable litigation expenses under the statute.
3. The Hearing Board shall deny an award of litigation expenses to the respondent if:
 - a. The respondent failed to meet the burden of proof set forth above; or
 - b. The Commission was substantially justified in the actions leading to the proceedings and in the adjudicatory proceeding itself; or
 - c. The Commission was charged by statute with investigating a complaint that led to the adjudicatory proceeding.
4. Notwithstanding the provisions of § 4.15(F)(2) of this Part above, the Hearing Board may, at its discretion, deny fees or expenses if an award of litigation expenses would be unjust due to special circumstances that exist.

4.15 Forms

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

525-RICR-10-00-4

TITLE 525 - GOVERNOR'S COMMISSION ON DISABILITIES

CHAPTER 10 - GENERAL ADMINISTRATION

SUBCHAPTER 00 - N/A

PART 4 - Investigation and Hearing of Complaints (525-RICR-10-00-4)

Type of Filing: Amendment

Effective Date: 04/27/2018

Editorial Note: This Part was filed with the Department of State prior to the launch of the Rhode Island Code of Regulations. As a result, this digital copy is presented solely as a reference tool. To obtain a certified copy of this Part, contact the Administrative Records Office at (401) 222-2473.