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## **Chapter O Investigation and Hearing of Complaints relating to alleged violations of the Civil Rights of People with Disabilities relating to the physical inaccessibility of buildings and structures<sup>1</sup>**

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### ***I. STATUTORY AUTHORITY***

RI GL 42-87-5 (b) Civil Rights Of People With Disabilities: Enforcement Of Anti-Discrimination Provisions<sup>2</sup> & RIGL 42-51-6.1 Governor’s Commission on Disabilities: Hearing Boards<sup>3</sup>

### ***II. 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.

### ***III. DEFINITIONS***

A. “Adjudicatory Proceeding” means a proceeding before the Hearing Board, established in section 42-51-6.1 of the General Laws of Rhode Island, in which the legal rights or duties of specifically named persons are determined after opportunity for a hearing.

B. “Commercial Facility”<sup>4</sup>, means the same as defined in the Americans with Disabilities Act, Title III Regulation 28 CFR 35.

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- C. "The Commission" means the [Governor's Commission on Disabilities](#)<sup>5</sup>.
- D. "Commissioner" means a member of the Governor's Commission on Disabilities appointed by the Governor, pursuant to RIGL 42-51-2.
- E. "Complainant" means the aggrieved individual who files a complaint with the Commission alleging a violation of the provisions of RIGL 42-87 relating to the physical inaccessibility of buildings and structures.
- F. "Conciliation Agreement" means a final resolution of the complaint entered into by the parties prior to the initiation of the formal adjudicatory proceeding.
- G. "Discriminate" means engaging in any act or acts prohibited by RIGL 42-87, relating to the physical inaccessibility of buildings and structures.
- H. "Employer" means a person or entity doing business in the state, any person or entity regulated by the state, any person or entity receiving 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<sup>6</sup>.
- I. "Hearing Board" means a board of five (5) Commissioners appointed by the Commission Chairperson, pursuant to RIGL 42-51-6.1, as the Hearing Board for the purpose of conducting hearings and rendering decisions on matters relating to the provisions of RIGL 42-87 and RIGL 37-8-15.1 and RIGL 42-46-13 within the jurisdiction of the Commission.
- J. "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 Rule VII E of the Commission Rules and Regulations.
- K. "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization.
- L. "Person with a Disability" means any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of an impairment; or is regarded as having an impairment.
- M. "Physical or mental impairment" means 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; genito-urinary; hemic and lymphatic; skin; and endocrine; or any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.
- N. The term "public accommodation" includes the terms "Private Entity"<sup>7</sup>, "Place of Public Accommodation"<sup>8</sup>, "Private clubs"<sup>9</sup> and "religious entities"<sup>10</sup> as defined in the Americans with Disabilities Act, Title III Regulation 28 CFR 36. Private clubs and religious entities, while exempt from coverage under the Americans with Disabilities Act (except to the extent that the facilities of the private club are made available to customers or patrons of a place of public

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accommodation), are not exempt from compliance with Title 42 Chapter 87 of the General Laws of the State of Rhode Island.

O. "Public Entity"<sup>11</sup> means the same as defined in the Americans with Disabilities Act, Title II Regulation 28 CFR 35.

P. "Respondent" means a person against whom a complaint has been filed who is alleged to have violated any of the provisions of RIGL 42-87 relating to the physical inaccessibility of buildings and structures.

Q. "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 committee thereof, or any other agency that is in any branch of Rhode Island state government and which exercises governmental functions.

**IV. JURISDICTION**

A. Pursuant to RIGL 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 RIGL 42-51-6.1, the Hearing Board has jurisdiction to conduct hearings and render decisions on matters relating to the provisions of RIGL 42-87 and of RIGL 37-8-15.1 and 42-46-13.

**V. FILING A COMPLAINT**

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;

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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

6. 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. Notwithstanding the provisions of Sections V B of Chapter O of the Commission Rules and Regulations, 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.

## **VI. STANDARDS FOR DETERMINING VIOLATIONS**

A. Standards for Determining Which Elements of Public Accommodations and Commercial Facilities Must be Accessible {Are in the Appendix}

1. For public accommodations whose most recent certificate of occupancy for the facility was issued prior to January 27, 1993 or the most recent physical alteration of the property began prior to January 27, 1992<sup>12</sup> the elements which must be accessible are those listed in 28 CFR 36.304 "Removal of barriers"<sup>13</sup> 28 CFR 36.305 "Alternatives to barrier removal"<sup>14</sup>, 28 CFR 36.306 "Personal devices and services"<sup>15</sup>, and 28 CFR 36.308 "Seating in assembly areas"<sup>16</sup> (Americans with Disabilities Act Title III Regulations issued by the US Department of Justice).

2. For the public accommodation whose first certificate of occupancy for the facility is issued 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 CFR 36 Subpart D “New Construction and Alterations”<sup>17</sup>.
3. 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 CFR 1630.9 (Americans with Disabilities Act Title I Regulations issued by the US Equal Employment Opportunity Commission).
4. For commercial facilities whose first certificate of occupancy for the facility is issued after January 26, 1993 or if the physical alteration of the property begins after January 26, 1992<sup>18</sup> 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.
5. For commercial facilities located in private residences, the accessibility standard will conform to 28 CFR 36.401 “New construction (b) Commercial facilities located in private residences”<sup>19</sup> provision of 28 CFR 36 Subpart C.
6. Exception for structural impracticability will conform to the provisions of 28 CFR 36.401 “New Construction (c) Exception for structural impracticability”<sup>20</sup>.
7. Elevator exemptions will conform to the provisions of 28 CFR 36.401 “New Construction (d) Elevator exemptions”<sup>21</sup>.
8. 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 CFR 36.402 “Alterations”<sup>22</sup>, 36. 403 “Alterations: Path of travel”<sup>23</sup>, 36.404 “Alterations: Elevator exemption”<sup>24</sup>, and 36.405 “Alterations: Historic preservation”<sup>25</sup>.

B. The accessibility standard for construction and alterations

1. The standard specified in 28 CFR 36.406 “Standards for new construction and alterations”<sup>26</sup> 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

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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 CFR 35.150 “Existing facilities”<sup>27</sup>, 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 CFR 35.151 “New construction and alterations”<sup>28</sup> 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<sup>29</sup>.
4. The accessibility standard specified in 28 CFR 35.151 is the Uniform Federal Accessibility Standards (UFAS) or with the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG). Public entities are also required to conform to the provisions of 28 CFR 35.163 Information and signage<sup>30</sup>.

**VII. INVESTIGATION**

Pursuant to RIGL 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<sup>31</sup>.

A. 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.

B. 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 CFR 36, 28 CFR 35, and 29 CFR 1630.<sup>32</sup>

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C. 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.

**VIII. CONCILIATION**

A. Prior to instituting a formal hearing, the Commission shall attempt by informal methods of conference, persuasion and conciliation, to induce compliance with Title 42, Chapter 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:

D. The method(s) of compliance;

E. A renovation timetable; and

F. 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.

G. 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 reinspect the buildings and structures cited in the complaint, as the Commission deems necessary to determine compliance with the terms of conciliation.

H. 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.

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1. 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 RIGL 42-87-5(b).<sup>33</sup>

**IX. HEARING**

A. The Commission's Hearing Board shall:

1. Hear all unresolved complaints relating to alleged violations of RIGL 42-87 relating to the physical inaccessibility of buildings and structures. The Hearing Board will hear all complaint that cannot be resolves 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 Section VII C (c).

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 section VII C(b) 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;

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- 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.

A person shall, whenever possible, be joined as a party in the complaint when:

1. In his or her absence complete relief cannot be accorded among those already existing parties, or
2. 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 (a) as a practical matter impair or impede his or her ability to protect that interest or (b) 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.
3. 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.

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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 RIGL 42-46 of the General Laws of the State of Rhode Island [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.

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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 prefiled 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 RIGL 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 RIGL 42-87.

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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 RIGL 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 RIGL 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 to 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

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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.

**X. 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 RIGL 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.<sup>34</sup>
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 RIGL 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.

**XI. 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.*

## **XII. COMPLAINTS COVERED BY MULTIPLE JURISDICTION**

### **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 RIGL 42-87 (5)(a)<sup>35</sup> 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 RIGL 42-87 (5)(c) or 16-39<sup>36</sup> of the General Laws of the State of Rhode Island.
- 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 RIGL 23-27.3 -127.1<sup>37</sup> of the General Laws of the State of Rhode Island.
- 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.

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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 RIGL 23-33-15<sup>38</sup> or RIGL 28-20-19<sup>39</sup> of the General Laws of the State of Rhode.

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.

**XIII. COMPLAINTS FILED PRIOR TO AUGUST 1, 2002**

A. Any proceedings or other business or matters, undertaken or commenced prior August 1, 2002 by the handicap accessibility unit of the State Building Commission and pending on August 1, 2002, may be conducted and completed by the Governor's Commission on Disabilities.<sup>40</sup>

B. Conciliation Agreements.

1. All conciliation agreements executed by the State Building Commission prior to August 1, 2002 shall be a final order for the purposes of judicial review.

2. At its discretion the Governor's Commission on Disabilities may investigate whether the respondent is complying with the terms of a conciliation agreement of the State Building Commission entered into prior to August 1, 2002. Upon determining that the terms of the agreement are not being complied with, the Governor's Commission on Disabilities may take appropriate action to assure compliance including, but not limited to, petitioning a Superior Court for its enforcement, or if less than twelve months have passed since the alleged discriminatory acts, issuing a complaint and notice of hearing.

C. Investigation and Conciliation

Any preliminary investigation and conciliation procedures active on or about August 1, 2002, by the State Building Commission shall continue to be pursued the Governor's Commission on Disabilities pursuant to Chapter O of the Governor's Commission on Disabilities' Rules and Regulations.

**XIV. 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 (RIGL 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 RIGL 42-92-2, a respondent may submit a claim for litigation expenses to the Hearing Board that heard the matter. For purposes of this section, 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

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:

1. That the respondent is a party as defined in RIGL 42-92-2;
2. That the respondent has prevailed in the underlying adjudicatory proceeding;
3. That the Commission was not charged by statute with investigating a complaint which led to the underlying adjudicatory proceeding; and
4. The amount of reasonable litigation expenses as defined in RIGL 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

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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:
  - d) That the respondent is a party as defined in RIGL 42-92-2; and
  - e) That the respondent has prevailed in the underlying adjudicatory proceeding; and
  - f) The amount of reasonable litigation expenses as defined in RIGL 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 section 2 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.

**XV. FORMS**

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

**XVI. APPENDIX**

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

## Regulations for Investigation / Hearings under RIGL 42-87-5(b)

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<sup>1</sup> History: Proposed on October 15, 2002      Public Hearing on November 25, 2002      Adopted November 25, 2002  
Effective December 27, 2002      Technical Amendments Adopted September 13, 2003      Proposed  
Amendments on September 11, 2004      Public Hearing on November 1, 2004      Effective December 10, 2004

### <sup>2</sup> **RIGL 42-87 CIVIL RIGHTS OF PEOPLE WITH DISABILITIES**

#### **42-87-1. Definitions.**

As used in this chapter:

- (1) 'Disability' means any impairment as defined in subdivision (8); provided, however, that whether a person has a disability shall be determined without regard to the availability or use of mitigating measures, such as reasonable accommodations, prosthetic devices, medications or auxiliary aids.
- (2) 'Discrimination' includes those acts prohibited on the basis of race by 42 USC §§ 1981, 1983 and those on the basis of disability by 29 USC § 794, and those on the basis of disability by 42 USC § 12101 et seq., and those on the basis of disability by chapter 5 of title 28.
- (3) 'Has a record of an impairment' means has a history of or has been misclassified as having a physical or mental impairment that substantially limits one or more major life activities.
- (4) 'Is regarded as having an impairment' means:
  - (i) Has a physical or mental impairment that does not substantially limit major life activities but that is treated as constituting a limitation; or
  - (ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward the impairment; or
  - (iii) Has none of the impairments defined in subsection (c) but is treated as having an impairment.
- (5) 'Major life activities' means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.
- (6) 'Otherwise qualified' means:
  - (i) With respect to employment, a person with a disability who, with reasonable accommodations, can perform the essential functions of the job in question;
  - (ii) With respect to the rental of property, a person with a disability who, personally or with assistance arranged by the person with a disability, is capable of performing all of the responsibilities of a tenant as contained in § 34-18-24;
  - (iii) With respect to any other program or activity, a person with a disability who meets the essential eligibility requirements for participation in, or receipt of, benefits from the program or activity; and
  - (iv) The fact that an individual has applied for, received or continues to receive private insurance or government assistance based upon his or her disability shall not be determinative as to whether the individual is otherwise qualified as defined herein, nor shall it constitute an estoppel or otherwise serve as a basis to deny the individual the protections of this chapter.
- (7) 'Person with a disability' means any person who:
  - (i) Has a physical or mental impairment which substantially limits one or more major life activities; or
  - (ii) Has a record of an impairment; or
  - (iii) Is regarded as having an impairment.
- (8) 'Physical or mental impairment' means 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; genito-urinary; hemic and lymphatic; skin; and endocrine; or any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

#### **42-87-2. Discrimination prohibited.**

No otherwise qualified person with a disability shall, solely by reason of his or her disability, be subject to discrimination by any person or entity doing business in the state; nor shall any otherwise qualified person with a disability be excluded from participation in or denied the benefits of any program, activity or service of, or, by 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.

#### **42-87-3. Discriminatory acts.**

The discriminatory acts prohibited by § 42-87-2 include, but are not limited to, the following activities:

- (1) Notwithstanding any law to the contrary, no person or entity licensed or regulated by the state, or having received financial assistance from the state, or doing business within the state, shall:
  - (i) Deny an otherwise qualified person with a disability the opportunity to participate in or benefit from any aid, benefit or service;
  - (ii) Afford an otherwise qualified person with a disability an opportunity to participate in or benefit from any aid, benefit, or service that is not equal to that afforded others;

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- (iii) Provide an otherwise qualified person with a disability with an aid, benefit, or service that is not as effective as that provided to others;
  - (iv) Provide different or separate aid, benefits, or services to otherwise qualified persons with a disability or to any class of otherwise qualified persons with a disability unless that action is necessary to provide otherwise qualified persons with a disability with aid, benefits, or services that are as effective as those provided to others;
  - (v) Aid or perpetuate discrimination against an otherwise qualified person with a disability by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the recipients program;
  - (vi) Deny an otherwise qualified person with a disability the opportunity to participate as a member of planning or advisory boards; or
  - (vii) Otherwise limit an otherwise qualified person with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.
- (2) Notwithstanding any inconsistent terms of any collective bargaining agreement, no otherwise qualified person with a disability shall, solely on the basis of disability, who with reasonable accommodation and with no major cost can perform the essential functions of the job in question, be subjected to discrimination in employment by any person or entity receiving financial assistance from the state, or doing business within the state. The provisions of this subsection apply to the following activities:
- (i) Recruitment, advertising, and the processing of applications for employment;
  - (ii) Hiring, upgrading, promotion, award to tenure, demotion, transfer, layoff, termination, right to return from layoff, and rehiring;
  - (iii) Rates of pay or any other form of compensation and changes in compensation;
  - (iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
  - (v) Leave of absence, sick leave, or any other leave;
  - (vi) Fringe benefits available by virtue of employment, whether or not administered by the recipient;
  - (vii) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
  - (viii) Employer sponsored activities including social or recreational programs; and
  - (ix) Any other term, condition, or privilege of employment.
- (3) Any persons with a disability shall be entitled to full and equal access, are members of the general public, to all housing accommodations offered for rent, lease, or compensation in this state, subject to the conditions and limitations established by law and applicable alike to all persons.
- (4) Every person with a disability who has a personal assistive animal, or who obtains a personal assistive animal, shall be entitled to full and equal access to all housing and other public accommodations provided for in this chapter and shall not be required to pay extra compensation for the personal assistive animal, but shall be liable for any damage done to the premises by a personal assistive animal. For the purposes of this subsection a 'personal assistive animal' is an animal specifically trained, by a certified animal training program, to assist a person with a disability perform independent living tasks.
- (5) No qualified individual with a disability, as defined in the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq., nor any individual or entity because of a known relationship or association with an individual with a disability shall be:
- (i) Discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation or commercial facilities covered by the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.;
  - (ii) Excluded from participation in or be denied the benefits of the services, programs, or activities of, or be subjected to discrimination by, a public entity covered by the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.; and
  - (iii) Subject to discrimination in employment by a public entity or employer covered by the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.
- (6) The application, exemptions, definitions, requirements, standards, and deadlines for compliance with subsection (e) shall be 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 CFR 36, 28 CFR 35, and 29 CFR 1630.

### **42-87-4. Civil liability.**

- (a) Any person with a disability who is the victim of discrimination prohibited by this chapter may bring an action in the Superior Court against the person or entity causing the discrimination for equitable relief, compensatory and/or punitive damages or for any other relief that the court deems appropriate.
- (b) No person with a disability whose action for discrimination is otherwise within the jurisdiction of the Commission for human rights under chapter 5 of title 28, chapter 24 of title 11 or chapter 37 of title 34 may bring an action under

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this section, unless the Commission for human rights has failed to act upon that person's complaint within sixty (60) days of filing, or the Commission has issued a final order on the complaint.

### **42-87-5. Enforcement of anti-discrimination provisions.**

(a) Except as specifically set forth in subsections (b) and (c), the Rhode Island Commission for human rights is empowered and directed to prevent any person from violating any of the provisions of sections 42-87-1 -- 42-87-4, provided that before instituting a formal hearing it shall attempt by informal methods of conference, persuasion, and conciliation, to induce compliance with those sections. Upon the Commission's own initiative or whenever an aggrieved individual or an organization chartered for the purpose of combating discrimination or of safeguarding civil liberties or rights of persons with disabilities, the individual or organization being hereinafter referred to as the complainant, makes a charge to the Commission that any person, agency, bureau, corporation or association, hereinafter referred to as the respondent, has violated or is violating any of the provisions of sections 42-87-1 -- 42-87-4, the Commission may proceed in the same manner and with the same powers as provided in sections 28-5-16 -- 28-5-26, and the provisions of sections 28-5-13 and 28-5-16 -- 28-5-36, as to the powers, duties and rights of the Commission, its members, hearing examiners, the complainant, respondent, interviewer, and the court shall apply in any proceedings under this section.

(b) (1) The governor's Commission on disabilities is empowered and directed to investigate and hear all complaints relating to alleged violations of this chapter relating to the physical inaccessibility of buildings and structures.

(2) The governor's Commission on disabilities shall have the power and duties to adopt, promulgate, amend and rescind rules and regulations to effectuate the provisions of this section.

(i) Prior to instituting a formal hearing, the governor's Commission on disabilities shall attempt by informal methods of conference, persuasion and conciliation, to induce compliance with this chapter. If the complaint or any portion of the complaint cannot be resolved by these informal methods, the governor's Commission on disabilities shall conduct a hearing as provided by this section.

(ii) If the governor's Commission on disabilities shall upon all the evidence find that the respondent has not engaged in violations of the civil rights of individuals with disabilities caused by the physical inaccessibility of buildings and structures, the Commission shall state his or her findings of fact and shall issue and cause to be served on the complainant an order dismissing the complaint as to the respondent.

(iii) If upon all the testimony taken, the Commission shall determine that the respondent has engaged in violations of the civil rights of individuals with disabilities caused by the physical inaccessibility of buildings and structures, then the Commission shall state its findings of fact and shall issue and cause to be served upon the respondent an order requiring the respondent to cease and desist from such practices, and to take any further action that will effectuate the purposes of this chapter.

(iv) Any complainant or respondent claiming to be aggrieved by a final order of the Commission may obtain judicial review of the final order; any party may obtain an order of court for enforcement of a final order of the Commission. These proceedings shall be brought in the superior court within any county where the unlawful practices, which are the subject of the hearing officer's order, were committed or where any respondent, required in the order to cease and desist from unlawful practices or to take other affirmative action resides or transacts business.

(c) The Rhode Island department of education is empowered and directed to hear all complaints relating to violations of this chapter in the area of elementary and secondary education. Those complaints shall be heard in accordance with the process set forth in chapter 39 of title 16.

### **<sup>3</sup> 42-51-6.1. Governor's Commission on Disabilities – Hearing boards. –**

(1) The Commission's chairperson shall appoint five (5) Commissioners as the Hearing Board for the purpose of conducting hearings and rendering decisions on matters relating to the provisions of chapter 87 of title 42 and sections 37-8-15.1 and 42-46-13 within the jurisdiction of the Commission.

(2) Three (3) Commissioners shall constitute a quorum of a Hearing Board.

(3) The Hearing Board is empowered to:

(i) Receive, investigate, and act upon charges of unlawful practices within its jurisdiction; and

(ii) In connection with any investigation or hearing held on any matter within its jurisdiction to hold hearings, administer oaths, take the testimony of any person under oath, and to require the production for examination of any books and papers relating to any matter under investigation or in question before the Hearing Board.

<sup>4</sup> 28 CFR 36.104 "Commercial facilities means facilities --

(1) Whose operations will affect commerce;

(2) That are intended for nonresidential use by a private entity; and

(3) That are not --

(i) Facilities that are covered or expressly exempted from coverage under the Fair Housing Act of 1968, as amended (42 U.S.C. 3601 - 3631);

(ii) Aircraft; or

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(iii) Railroad locomotives, railroad freight cars, railroad cabooses, commuter or intercity passenger rail cars (including coaches, dining cars, sleeping cars, lounge cars, and food service cars), any other railroad cars described in section 242 of the Act or covered under title II of the Act, or railroad rights-of-way. For purposes of this definition, "rail" and "railroad" have the meaning given the term "railroad" in section 202(e) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 431(e)).

### <sup>5</sup> Governor's Commission on Disabilities

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

401-462-0100 (voice); 462-0101 (tty) and 462-0106 (fax)

[disabilities@gcd.ri.gov](mailto:disabilities@gcd.ri.gov) (e-mail) and

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

<sup>6</sup> See endnote 2 above RIGL 42-87-2 & 3

<sup>7</sup> 28 CFR 36.104 "Private entity means a person or entity other than a public entity." As covered by the application provisions 28 CFR 36.102 (3) "Private entity that offers examinations or courses related to applications, licensing, certification, or credentialing for secondary or postsecondary education, professional, or trade purposes."

<sup>8</sup> 28 CFR 36.104 "Public accommodation means a private entity that owns, leases (or leases to), or operates a place of public accommodation."

"Place of public accommodation means a facility, operated by a private entity, whose operations affect commerce and fall within at least one of the following categories --

- (1) An inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of the establishment as the residence of the proprietor;
- (2) A restaurant, bar, or other establishment serving food or drink;
- (3) A motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;
- (4) An auditorium, convention center, lecture hall, or other place of public gathering;
- (5) A bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment;
- (6) A laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment;
- (7) A terminal, depot, or other station used for specified public transportation;
- (8) A museum, library, gallery, or other place of public display or collection;
- (9) A park, zoo, amusement park, or other place of recreation;
- (10) A nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education;
- (11) A day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment; and
- (12) A gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation."

<sup>9</sup> 28 CFR 36.104 "Private club means a private club or establishment exempted from coverage under title II of the Civil Rights Act of 1964 (42 U.S.C. 2000a(e))."

<sup>10</sup> 28 CFR 36.104 "Religious entity means a religious organization, including a place of worship."

<sup>11</sup> 28 CFR 35.104 "Public entity means --

- (1) Any State or local government;
- (2) Any department, agency, special purpose district, or other instrumentality of a State or States or local government; and
- (3) The National Railroad Passenger Corporation, and any commuter authority (as defined in section 103(8) of the Rail Passenger Service Act). (45 U.S.C. 541)"

<sup>12</sup> "28 CFR 36.401 New construction.

(a) General. (1) Except as provided in paragraphs (b) and (c) of this section, discrimination for purposes of this part includes a failure to design and construct facilities for first occupancy after January 26, 1993, that are readily accessible to and usable by individuals with disabilities.

(2) For purposes of this section, a facility is designed and constructed for first occupancy after January 26, 1993, only --

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- (i) If the last application for a building permit or permit extension for the facility is certified to be complete, by a State, County, or local government after January 26, 1992 (or, in those jurisdictions where the government does not certify completion of applications, if the last application for a building permit or permit extension for the facility is received by the State, County, or local government after January 26, 1992); and
- (ii) If the first certificate of occupancy for the facility is issued after January 26, 1993.”

### <sup>13</sup> 28 CFR 36.304 Removal of barriers

(a) *General.* A public accommodation shall remove architectural barriers in existing facilities, including communication barriers that are structural in nature, where such removal is readily achievable, i.e., easily accomplishable and able to be carried out without much difficulty or expense.

(b) *Examples.* Examples of steps to remove barriers include, but are not limited to, the following actions --

- (1) Installing ramps;
- (2) Making curb cuts in sidewalks and entrances;
- (3) Repositioning shelves;
- (4) Rearranging tables, chairs, vending machines, display racks, and other furniture;
- (5) Repositioning telephones;
- (6) Adding raised markings on elevator control buttons;
- (7) Installing flashing alarm lights;
- (8) Widening doors;
- (9) Installing offset hinges to widen doorways;
- (10) Eliminating a turnstile or providing an alternative accessible path;
- (11) Installing accessible door hardware;
- (12) Installing grab bars in toilet stalls;
- (13) Rearranging toilet partitions to increase maneuvering space;
- (14) Insulating lavatory pipes under sinks to prevent burns;
- (15) Installing a raised toilet seat;
- (16) Installing a full-length bathroom mirror;
- (17) Repositioning the paper towel dispenser in a bathroom;
- (18) Creating designated accessible parking spaces;
- (19) Installing an accessible paper cup dispenser at an existing inaccessible water fountain;
- (20) Removing high pile, low density carpeting; or
- (21) Installing vehicle hand controls.

(c) *Priorities.* A public accommodation is urged to take measures to comply with the barrier removal requirements of this section in accordance with the following order of priorities.

(1) First, a public accommodation should take measures to provide access to a place of public accommodation from public sidewalks, parking, or public transportation. These measures include, for example, installing an entrance ramp, widening entrances, and providing accessible parking spaces.

(2) Second, a public accommodation should take measures to provide access to those areas of a place of public accommodation where goods and services are made available to the public. These measures include, for example, adjusting the layout of display racks, rearranging tables, providing Brailled and raised character signage, widening doors, providing visual alarms, and installing ramps.

(3) Third, a public accommodation should take measures to provide access to restroom facilities. These measures include, for example, removal of obstructing furniture or vending machines, widening of doors, installation of ramps, providing accessible signage, widening of toilet stalls, and installation of grab bars.

(4) Fourth, a public accommodation should take any other measures necessary to provide access to the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodations.

(d) *Relationship to alternations requirements of subpart D of this part.*

(1) Except as provided in paragraph (d)(2) of this section, measures taken to comply with the barrier removal requirements of this section shall comply with the applicable requirements for alternations in § 36.402 and §§ 36.404-36.406 of this part for the elements altered. The part of travel requirements of § 36.403 shall not apply to measures taken solely to comply with the barrier removal requirements of this part.

(2) If, as a result of compliance with the alterations requirements specified in paragraph (d)(1) of this section, the measures required to remove a barrier would not be readily achievable, a public accommodation may take other readily achievable measures to remove the barrier that do not fully comply with the specified requirements. Such measures include, for example, providing a ramp with a steeper slope or widening a doorway to a narrower width than that mandated by the alterations requirements. No measure shall be taken, however, that poses a significant risk to the health or safety of individuals with disabilities or others.

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(e) *Portable ramps.* Portable ramps should be used only when installation of a permanent ramp is not readily achievable. In order to avoid any significant risk to the health or safety of individuals with disabilities or others in using portable ramps, due consideration shall be given to safety features such as nonslip surfaces, railings, anchoring, and strength of materials.

(f) *Selling or serving space.* The rearrangement of temporary or movable structures, such as furniture, equipment, and display racks is not readily achievable to the extent that it results in a significant loss of selling or serving space.

(g) *Limitation on barrier removal obligations.* The requirements for barrier removal shall not be interpreted to exceed the standards for alterations under the rehabilitation building code (or 28 CFR 36 subpart D) or when the relevant standards for alterations are not provided the requirements for barrier removal shall not be interpreted to exceed the standards for new construction in the state building code (or 28 CFR 36 subpart D).”

<sup>14</sup> “28 CFR 36.305 Alternatives to barrier removal

(a) *General.* Where a public accommodation can demonstrate that barrier removal is not readily achievable, the respondent shall not fail to make its goods, services, facilities, privileges, advantages, or accommodations available through alternative methods, if those methods are readily achievable.

(b) *Examples.* Examples of alternatives to barrier removal include, but are not limited to, the following actions --

(1) Providing curb service or home delivery;

(2) Retrieving merchandise from inaccessible shelves or racks;

(3) Relocating activities to accessible locations;

(c) *Multiscreen cinemas.* If it is not readily achievable to remove barriers to provide access by persons with mobility impairments to all of the theaters of a multiscreen cinema, the cinema shall establish a film rotation schedule that provides reasonable access for individuals who use wheelchairs to all films. Reasonable notice shall be provided to the public as to the location and time of accessible showings.”

<sup>15</sup> “28 CFR 36.306 Personal devices and services

This part does not require a public accommodation to provide its customers, clients, or participants with personal devices, such as wheelchairs; individually prescribed devices, such as prescription eyeglasses or hearing aids; or services of a personal nature including assistance in eating, toileting, or dressing.”

<sup>16</sup> “28 CFR 36.308 Seating in assembly areas

To the extent that it is readily achievable, a public accommodation in assembly areas shall --

Provide a reasonable number of wheelchair seating spaces and seats with removable aisle-side arm rests; and

Locate the wheelchair seating spaces so that they --

Are dispersed throughout the seating area;

Provide lines of sight and choice of admission prices comparable to those for members of the general public;

Adjoin an accessible route that also serves as a means of egress in case of emergency; and

Permit individuals who use wheelchairs to sit with family members or other companions.

If removal of seats is not readily achievable, the respondent shall provide, to the extent that it is readily achievable to do so, a portable chair or other means to permit a family member or other companion to sit with an individual who uses a wheelchair.

The requirements shall not be interpreted to exceed the standards for alterations in the rehabilitation building code (or 28 CFR 36 subpart D).

The provision and location of wheelchair seating spaces in newly constructed or altered assembly areas shall be governed by the standards for new construction and alterations in the building code, rehabilitation-building code (or 28 CFR 36 subpart D).”

<sup>17</sup> See endnote 13 above “28 CFR 36.401 New construction (a) General.

<sup>18</sup> See endnote 13 above “28 CFR 36.401 New construction (a) General.

<sup>19</sup> “28 CFR 36.401 New construction (b) Commercial facilities located in private residences.

(1) When a commercial facility is located in a private residence, the portion of the residence used exclusively as a residence is not covered by this subpart, but that portion used exclusively in the operation of the commercial facility or that portion used both for the commercial facility and for residential purposes is covered by the new construction and alterations requirements of this subpart.

(2) The portion of the residence covered under paragraph (b)(1) of this section extends to those elements used to enter the commercial facility, including the homeowner's front sidewalk, if any, the door or entryway, and hallways; and those

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portions of the residence, interior or exterior, available to or used by employees or visitors of the commercial facility, including restrooms.”

<sup>20</sup> “28 CFR 36.401 New construction (c) Exception for structural impracticability. (1) Full compliance with the requirements of this section is not required where an entity can demonstrate that it is structurally impracticable to meet the requirements. Full compliance will be considered structurally impracticable only in those rare circumstances when the unique characteristics of terrain prevent the incorporation of accessibility features.

(2) If full compliance with this section would be structurally impracticable, compliance with this section is required to the extent that it is not structurally impracticable. In that case, any portion of the facility that can be made accessible shall be made accessible to the extent that it is not structurally impracticable.

3) If providing accessibility in conformance with this section to individuals with certain disabilities (e.g., those who use wheelchairs) would be structurally impracticable, accessibility shall nonetheless be ensured to persons with other types of disabilities (e.g., those who use crutches or who have sight, hearing, or mental impairments) in accordance with this section.”

<sup>21</sup> “28 CFR 36.401 New construction (d) Elevator exemption. (1) For purposes of this paragraph (d) --

(i) Professional office of a health care provider means a location where a person or entity regulated by a State to provide professional services related to the physical or mental health of an individual makes such services available to the public. The facility housing the "professional office of a health care provider" only includes floor levels housing at least one health care provider, or any floor level designed or intended for use by at least one health care provider.

(ii) Shopping center or shopping mall means --

(A) A building housing five or more sales or rental establishments; or

(B) A series of buildings on a common site, either under common ownership or common control or developed either as one project or as a series of related projects, housing five or more sales or rental establishments. For purposes of this section, places of public accommodation of the types listed in paragraph (5) of the definition of "place of public accommodation" in section Sec.36.104 are considered sales or rental establishments. The facility housing a "shopping center or shopping mall" only includes floor levels housing at least one sales or rental establishment, or any floor level designed or intended for use by at least one sales or rental establishment.

(2) This section does not require the installation of an elevator in a facility that is less than three stories or has less than 3000 square feet per story, except with respect to any facility that houses one or more of the following:

(i) A shopping center or shopping mall, or a professional office of a health care provider.

(ii) A terminal, depot, or other station used for specified public transportation, or an airport passenger terminal. In such a facility, any area housing passenger services, including boarding and debarking, loading and unloading, baggage claim, dining facilities, and other common areas open to the public, must be on an accessible route from an accessible entrance.

(3) The elevator exemption set forth in this paragraph (d) does not obviate or limit, in any way the obligation to comply with the other accessibility requirements established in paragraph (a) of this section. For example, in a facility that houses a shopping center or shopping mall, or a professional office of a health care provider, the floors that are above or below an accessible ground floor and that do not house sales or rental establishments or a professional office of a health care provider, must meet the requirements of this section but for the elevator.”

<sup>22</sup> “28 CFR 36.402 Alterations.

(a) General. (1) Any alteration to a place of public accommodation or a commercial facility, after January 26, 1992, shall be made so as to ensure that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(2) An alteration is deemed to be undertaken after January 26, 1992, if the physical alteration of the property begins after that date.

(b) Alteration. For the purposes of this part, an alteration is a change to a place of public accommodation or a commercial facility that affects or could affect the usability of the building or facility or any part thereof.

(1) Alterations include, but are not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, changes or rearrangement in structural parts or elements, and changes or rearrangement in the plan configuration of walls and full-height partitions. Normal maintenance, reroofing, painting or wallpapering, asbestos removal, or changes to mechanical and electrical systems are not alterations unless they affect the usability of the building or facility.

(2) If existing elements, spaces, or common areas are altered, then each such altered element, space, or area shall comply with the applicable provisions of appendix A to this part.

(c) To the maximum extent feasible. The phrase "to the maximum extent feasible," as used in this section, applies to the occasional case where the nature of an existing facility makes it virtually impossible to comply fully with applicable accessibility standards through a planned alteration. In these circumstances, the alteration shall provide the maximum

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physical accessibility feasible. Any altered features of the facility that can be made accessible shall be made accessible. If providing accessibility in conformance with this section to individuals with certain disabilities (e.g., those who use wheelchairs) would not be feasible, the facility shall be made accessible to persons with other types of disabilities (e.g., those who use crutches, those who have impaired vision or hearing, or those who have other impairments).”

<sup>23</sup> “28 CFR 36.403 Alterations: Path of travel.

(a) General. An alteration that affects or could affect the usability of or access to an area of a facility that contains a primary function shall be made so as to ensure that, to the maximum extent feasible, the path of travel to the altered area and the restrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless the cost and scope of such alterations is disproportionate to the cost of the overall alteration.

(b) Primary function. A "primary function" is a major activity for which the facility is intended. Areas that contain a primary function include, but are not limited to, the customer services lobby of a bank, the dining area of a cafeteria, the meeting rooms in a conference center, as well as offices and other work areas in which the activities of the public accommodation or other private entity using the facility are carried out. Mechanical rooms, boiler rooms, supply storage rooms, employee lounges or locker rooms, janitorial closets, entrances, corridors, and restrooms are not areas containing a primary function.

(c) Alterations to an area containing a primary function. (1) Alterations that affect the usability of or access to an area containing a primary function include, but are not limited to --

- (i) Remodeling merchandise display areas or employee work areas in a department store;
- (ii) Replacing an inaccessible floor surface in the customer service or employee work areas of a bank;
- (iii) Redesigning the assembly line area of a factory; or
- (iv) Installing a computer center in an accounting firm.

(2) For the purposes of this section, alterations to windows, hardware, controls, electrical outlets, and signage shall not be deemed to be alterations that affect the usability of or access to an area containing a primary function.

(d) Landlord/tenant: If a tenant is making alterations as defined in Sec.36.402 that would trigger the requirements of this section, those alterations by the tenant in areas that only the tenant occupies do not trigger a path of travel obligation upon the landlord with respect to areas of the facility under the landlord's authority, if those areas are not otherwise being altered.

(e) Path of travel. (1) A "path of travel" includes a continuous, unobstructed way of pedestrian passage by means of which the altered area may be approached, entered, and exited, and which connects the altered area with an exterior approach (including sidewalks, streets, and parking areas), an entrance to the facility, and other parts of the facility.

(2) An accessible path of travel may consist of walks and sidewalks, curb ramps and other interior or exterior pedestrian ramps; clear floor paths through lobbies, corridors, rooms, and other improved areas; parking access aisles; elevators and lifts; or a combination of these elements.

(3) For the purposes of this part, the term "path of travel" also includes the restrooms, telephones, and drinking fountains serving the altered area.

(f) Disproportionality. (1) Alterations made to provide an accessible path of travel to the altered area will be deemed disproportionate to the overall alteration when the cost exceeds 20% of the cost of the alteration to the primary function area.

(2) Costs that may be counted as expenditures required to provide an accessible path of travel may include:

- (i) Costs associated with providing an accessible entrance and an accessible route to the altered area, for example, the cost of widening doorways or installing ramps;
- (ii) Costs associated with making restrooms accessible, such as installing grab bars, enlarging toilet stalls, insulating pipes, or installing accessible faucet controls;
- (iii) Costs associated with providing accessible telephones, such as relocating the telephone to an accessible height, installing amplification devices, or installing a telecommunications device for deaf persons (TDD);
- (iv) Costs associated with relocating an inaccessible drinking fountain.

(g) Duty to provide accessible features in the event of disproportionality. (1) When the cost of alterations necessary to make the path of travel to the altered area fully accessible is disproportionate to the cost of the overall alteration, the path of travel shall be made accessible to the extent that it can be made accessible without incurring disproportionate costs.

(2) In choosing which accessible elements to provide, priority should be given to those elements that will provide the greatest access, in the following order:

- (i) An accessible entrance;
- (ii) An accessible route to the altered area;
- (iii) At least one accessible restroom for each sex or a single unisex restroom;
- (iv) Accessible telephones;
- (v) Accessible drinking fountains; and

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(vi) When possible, additional accessible elements such as parking, storage, and alarms.

(h) Series of smaller alterations. (1) The obligation to provide an accessible path of travel may not be evaded by performing a series of small alterations to the area served by a single path of travel if those alterations could have been performed as a single undertaking.

(2) (i) If an area containing a primary function has been altered without providing an accessible path of travel to that area, and subsequent alterations of that area, or a different area on the same path of travel, are undertaken within three years of the original alteration, the total cost of alterations to the primary function areas on that path of travel during the preceding three year period shall be considered in determining whether the cost of making that path of travel accessible is disproportionate.

(ii) Only alterations undertaken after January 26, 1992, shall be considered in determining if the cost of providing an accessible path of travel is disproportionate to the overall cost of the alterations.”

<sup>24</sup> “28 CFR 36.404 Alterations: Elevator exemption.

(a) This section does not require the installation of an elevator in an altered facility that is less than three stories or has less than 3,000 square feet per story, except with respect to any facility that houses a shopping center, a shopping mall, the professional office of a health care provider, a terminal, depot, or other station used for specified public transportation, or an airport passenger terminal.

(1) For the purposes of this section, "professional office of a health care provider" means a location where a person or entity regulated by a State to provide professional services related to the physical or mental health of an individual makes such services available to the public. The facility that houses a "professional office of a health care provider" only includes floor levels housing by at least one health care provider, or any floor level designed or intended for use by at least one health care provider.

(2) For the purposes of this section, shopping center or shopping mall means --

(i) A building housing five or more sales or rental establishments; or

(ii) A series of buildings on a common site, connected by a common pedestrian access route above or below the ground floor, that is either under common ownership or common control or developed either as one project or as a series of related projects, housing five or more sales or rental establishments. For purposes of this section, places of public accommodation of the types listed in paragraph (5) of the definition of "place of public accommodation" in Sec.36.104 are considered sales or rental establishments. The facility housing a "shopping center or shopping mall" only includes floor levels housing at least one sales or rental establishment, or any floor level designed or intended for use by at least one sales or rental establishment.

(b) The exemption provided in paragraph (a) of this section does not obviate or limit in any way the obligation to comply with the other accessibility requirements established in this subpart. For example, alterations to floors above or below the accessible ground floor must be accessible regardless of whether the altered facility has an elevator.”

<sup>25</sup> “28 CFR 36.405 Alterations: Historic preservation.

(a) Alterations to buildings or facilities that are eligible for listing in the National Register of Historic Places under the National Historic Preservation Act (16 U.S.C. 470 et seq.), or are designated as historic under State or local law, shall comply to the maximum extent feasible with section 4.1.7 of appendix A to this part.

(b) If it is determined under the procedures set out in section 4.1.7 of appendix A that it is not feasible to provide physical access to an historic property that is a place of public accommodation in a manner that will not threaten or destroy the historic significance of the building or facility, alternative methods of access shall be provided pursuant to the requirements of subpart C of this part.”

<sup>26</sup> “28 CFR 36.406 Standards for new construction and alterations.

(a) New construction and alterations subject to this part shall comply with the standards for accessible design published as appendix A to this part (ADAAG).”

<sup>27</sup> “28 CFR 35.150 Existing facilities.

(a) *General.* A 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 paragraph does not --

(1) Necessarily require a public entity to make each of its existing facilities accessible to and usable by individuals with disabilities;

(2) Require a public entity to take any action that would threaten or destroy the historic significance of an historic property; or

(3) Require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. In those circumstances where personnel

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of the public entity believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, a public entity has the burden of proving that compliance with §35.150(a) of this part would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the head of a public entity or his or her designee after considering all resources available for use in the funding and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, a public entity shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits or services provided by the public entity.

(b) *Methods.* (1) *General.* A public entity may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock or other conveyances, or any other methods that result in making its services, programs, or activities readily accessible to and usable by individuals with disabilities. A public entity is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. A public entity, in making alterations to existing buildings, shall meet the accessibility requirements of §35.151. In choosing among available methods for meeting the requirements of this section, a public entity shall give priority to those methods that offer services, programs, and activities to qualified individuals with disabilities in the most integrated setting appropriate.

(2) *Historic preservation programs.* In meeting the requirements of §35.150(a) in historic preservation programs, a public entity shall give priority to methods that provide physical access to individuals with disabilities. In cases where a physical alteration to an historic property is not required because of paragraph (a)(2) or (a)(3) of this section, alternative methods of achieving program accessibility include --

(i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) Assigning persons to guide individuals with handicaps into or through portions of historic properties that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

(c) *Time period for compliance.* Where structural changes in facilities are undertaken to comply with the obligations established under this section, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(d) *Transition plan.* (1) In the event that structural changes to facilities will be undertaken to achieve program accessibility, a public entity that employs 50 or more persons shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. A public entity shall provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the development of the transition plan by submitting comments. A copy of the transition plan shall be made available for public inspection.

(2) If a public entity has responsibility or authority over streets, roads, or walkways, its transition plan shall include a schedule for providing curb ramps or other sloped areas where pedestrian walks cross curbs, giving priority to walkways serving entities covered by the Act, including State and local government offices and facilities, transportation, places of public accommodation, and employers, followed by walkways serving other areas.

(3) The plan shall, at a minimum --

(i) Identify physical obstacles in the public entity's facilities that limit the accessibility of its programs or activities to individuals with disabilities;

(ii) Describe in detail the methods that will be used to make the facilities accessible;

(iii) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(iv) Indicate the official responsible for implementation of the plan.

(4) If a public entity has already complied with the transition plan requirement of a Federal agency regulation implementing section 504 of the Rehabilitation Act of 1973, then the requirements of this paragraph shall apply only to those policies and practices that were not included in the previous transition plan.”

<sup>28</sup> “28 CFR 35.151 New construction and alterations.

(a) *Design and construction.* 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 in such manner that the facility or part of the facility is readily accessible to and usable by individuals with disabilities, if the construction was commenced after January 26, 1992.

(b) *Alteration.* Each facility or part of a facility altered by, on behalf of, or for the use of a public entity in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in

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such manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities, if the alteration was commenced after January 26, 1992.

(c) *Accessibility standards.* Design, construction, or alteration of facilities in conformance with the Uniform Federal Accessibility Standards (UFAS) (Appendix A to 41 CFR Part 101-19.6) or with the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG) (Appendix A to the Department of Justice's final rule implementing title III of the ADA, 28 C. F.R. 36) shall be deemed to comply with the requirements of this section with respect to those facilities, except that the elevator exemption contained at §4.1.3(5) and §4.1.6(1)(j) of ADAAG shall not apply. Departures from particular requirements of either standard by the use of other methods shall be permitted when it is clearly evident that equivalent access to the facility or part of the facility is thereby provided.

(d) *Alterations: Historic properties.* (1) Alterations to historic properties shall comply, to the maximum extent feasible, with §4.1.7 of UFAS or §4.1.7 of ADAAG.

(2) If it is not feasible to provide physical access to an historic property in a manner that will not threaten or destroy the historic significance of the building or facility, alternative methods of access shall be provided pursuant to the requirements of §35.150.

(e) *Curb ramps.* (1) Newly constructed or altered streets, roads, and highways must contain curb ramps or other sloped areas at any intersection having curbs or other barriers to entry from a street level pedestrian walkway.

(2) Newly constructed or altered street level pedestrian walkways must contain curb ramps or other sloped areas at intersections to streets, roads, or highways.”

<sup>29</sup> Listing of Federal Funding Sources, Code of Federal Regulation #, Effective Date, and Access Standard

<b>Federal Agency</b>	<b>CFR #</b>	<b>Effective</b>	<b>Alternative Standard</b>
<b>Agriculture</b>	7 CFR 15b	7/12/82	UFAS (ANSI A117.1-1980)
<b>Commerce</b>	15 CFR 8b	5/24/82	UFAS (GSA 41 CFR 101-19.603)
<b>Corporation for National Service (Action)</b>	45 CFR 1232	6/29/79	UFAS (ANSI A 117.1-1961 R1971)
<b>Defense</b>	32 CFR 56	6/1/82	Ch 18 DoD 4270.1-M EM 1110-1-103
<b>Energy</b>	10 CFR 1040	3/19/80	UFAS (ANSI A 117.1-1961 R1971)
<b>Environmental Protection</b>	40 CFR 7	2/13/84	UFAS
<b>Education</b>	34 CFR 104	7/3/77	UFAS
<b>General Services Administration</b>	41 CFR 101-8	7/11/82	GSA Accessibility Standard DG-6
<b>Health &amp; Human Services</b>	45 CFR 84	7/3/77	UFAS
<b>Housing &amp; Urban Development</b>	24 CFR 8	7/11/88	UFAS
<b>Interior</b>	43 CFR 17	7/7/82	UFAS (ATBCB 36 CFR 1190.31)
<b>Justice</b>	28 CFR 42	7/3/80	UFAS
<b>Labor</b>	29 CFR 32	11/6/80	UFAS (ANSI A 117.1-1961 R1971)
<b>Legal Services Corporation</b>	45 CFR 1624	10/25/79	No standard specifically cited
<b>National Endowment for the Arts</b>	45 CFR 1151	5/25/79	UFAS (ANSI A 117.1-1961 R1971)
<b>National Endowment for the Humanities</b>	45 CFR 1170	12/14/81	UFAS (ANSI A 117.1-1961 R1971)
<b>National Science Foundation</b>	45 CFR 605	3/1/82	UFAS (ANSI A 117.1-1961 R1971)
<b>Small Business Administration</b>	13 CFR 113	4/4/79	UFAS (ANSI A 117.1-1961 R1971)
<b>State</b>	22 CFR 142	11/21/80	UFAS
<b>Transportation</b>	49 CFR 27	6/31/79	ADAAG
<b>Veterans Affairs</b>	38 CFR 18	9/24/80	UFAS (ANSI A 117.1-1961 R1971)
<b>Federally Funded Construction</b>	41 CFR 101-19	7/27/74	UFAS (ANSI A 117.1-1961 R1971)

<sup>30</sup> “28 CFR 35.163 Information and signage.

(a) A public entity shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(b) A public entity shall provide signage at all inaccessible entrances to each of its facilities, directing users to an accessible entrance or to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each accessible entrance of a facility.”

<sup>31</sup> See endnote 2 above RIGL 42-87-5(b)(1)

<sup>32</sup> See endnote 2 above RIGL 42-87-3(6)

<sup>33</sup> See endnote 2 above RIGL 42-87-5(b)(2)(i)

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<sup>34</sup> See endnote 2 above RIGL 42-87-5(b)(2)(ii)

<sup>35</sup> See endnote 2 above RIGL 42-87-5(a)

<sup>36</sup> See endnote 2 above RIGL 42-87-5(c) and “RIGL 16-39 Controversies In School Matters

16-39-1 Appeal of matters of dispute to Commissioner.

Parties having any matter of dispute between them arising under any law relating to schools or education may appeal to the Commissioner of elementary and secondary education who, after notice to the parties interested of the time and place of hearing, shall examine and decide the appeal without cost to the parties involved.

16-39-2. Appeal of school committee actions to Commissioner.

Any person aggrieved by any decision or doings of any school committee or in any other matter arising under any law relating to schools or education may appeal to the Commissioner of elementary and secondary education who, after notice to the parties interested of the time and place of hearing, shall examine and decide the appeal without cost to the parties involved.

16-39-3. Appeal to state board of regents.

Any decision of the Commissioner in these matters shall be subject to an appeal to and review by the board of regents for elementary and secondary education.”

<sup>37</sup> RIGL 23-27.3-127-1 Committee to serve as a board of standards and appeals.

(a) The building code standards committee, after the state building code is adopted and promulgated, will serve as a board of standards and appeals except for appeals concerning the rehabilitation building and fire code, which appeals shall be heard and decided by the joint committee in accordance with the provisions of § 23-29.1-4. For the purpose of securing for the public the benefits of new developments in the building industry and insuring public health, safety, and welfare, the board shall make or cause to be made investigations, or may accept authenticated reports from recognized authoritative sources on new materials or modes of construction intended for use in the construction of buildings or structures, and shall promulgate the regulations setting forth the conditions under which the materials or modes of constructions may be used. The regulations and amendments thereto shall have the same force and effect as the provisions of the code. The committee shall as a body or as a sub-committee thereof, have the power to sit as a state board of appeals, and in the absence of a local board, to hear appeals from the decision of the local building official. The state building Commissioner shall serve as the secretary of the board of appeals.

(b) (1) An aggrieved party, as defined in subsections (b)(2)(i) - (b)(2)(vi) below, may appeal an interpretation, order, requirement, direction, or failure to act by the state building Commissioner, charged with the administration or enforcement of this code or any of its rules or regulations, directly to the state building code board of standards and appeals. The appeal shall be filed with the board of appeals within thirty (30) days of the mailing or posting of the interpretation, order, requirement, direction, or failure to act.

(2) An aggrieved party is defined as follows:

(i) An owner of the building or structure which is subject to any interpretation, order, direction, or failure to act by a local building official, state building Commissioner, or a local board of appeal's decision or failure to act.

(ii) Property owners within two hundred feet (200') of the property lines of a building or structure which is the subject of any appeal.

(iii) The state building Commissioner relative to any interpretation, order, requirement, direction, or failure to act by the local building official.

(iv) Any person, corporation, or other legal entity served with a notice of violation by the building official or the state building Commissioner.

(v) Any person who has reasonable grounds for believing that he or she is about to be subject to discrimination in violation of the accessibility for persons with disabilities provisions of this code, or organization chartered for the purpose of safeguarding rights of persons with disabilities, provided that the state building Commissioner has certified that the building plans are in violation of this code, the Americans with Disability Act, 42 U.S.C. § 12101 et seq., provisions or the Federal Fair Housing Act, 42 U.S.C. § 3601 et seq.

(vi) Any person who has reasonable grounds for believing that he or she is about to be subject to discrimination, or organization chartered for the purpose of safeguarding rights of persons with disabilities, as a result of an appeal to the code's provisions relating to persons with disabilities.

23-27.3-127.1.4. Procedures - Record of variances.

(a) Upon receipt of an appeal, the secretary of the board of standards and appeals shall appoint a panel of not less than nine (9) members of the board to hear the appeal. A majority of the panel constitutes a quorum.

(b) The board shall fix a day for hearing on the appeal and shall give reasonable notice thereof to the aggrieved party and the property owners within two hundred feet (200') of subject property line when, in the board's discretion, it may have an

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adverse effect on neighboring properties. A properly indexed record of all variations made shall be kept in the office of the state building Commissioner and shall be open to public inspection.

(c) An aggrieved party may file an appeal for a variance to the board by certified mail, and a hearing date shall be set by the board within thirty (30) days of filing. A copy of the decision of the board shall be mailed to the aggrieved party and the local board of appeal from which the appeal has been taken not later than thirty (30) days following the date of the hearing. Failure to render a decision within thirty (30) days does not affect the validity of the decision or appeal.

(d) Application for appeal must be accompanied by three (3) copies of the required plans for review by the state building Commission and the state board of standards and appeal. When available, a copy of the local board of appeals hearing transcript shall also be filed. When the board of appeals deems it necessary, the aggrieved party shall also provide a radius map indicating the adversely affected neighboring properties and a list of names and addresses of the properties.

(e) The local board of appeals shall submit to the state board of standards and appeals a copy of its decision.

(f) Any aggrieved party affected by any ruling of the state board of standards and appeals may appeal to the sixth division district court within thirty (30) days from the mailing to the local board of appeals and owner.

(g) (1) The appellant and the city or town involved in the original appeal to the board of standards and appeals shall remain as the parties in interest in any appeal to the sixth division district court. In the instance where a town or city does not have a legally constituted board of appeal and the state board is acting in accordance with § 23-27-1-127.1, the parties in interest in any appeal to the sixth division district court shall remain the original appellant. An appeal from a decision of the board of standards and appeals shall be instituted by the aggrieved party's filing a complaint in the sixth division district court in the county where the building or structure is located, and the complaint shall be served upon the opposing party in the manner prescribed by applicable procedural rules. The state board of standards and appeals shall not be a party to the appeal and shall not be served with the complaint.

(2) The filing of the complaint does not itself stay enforcement of the board's decision, but the board may grant, or the reviewing court may order, a stay upon appropriate terms.

(3) Once an appeal has been filed, the sixth division district court shall conduct its judicial review of the appeal in accordance with § 42-35-15(d), (e), (f), and (g), and subsequent review by the supreme court shall be in accordance with § 42-35-16.

(h) Upon the filing of an appeal to the sixth division district court, the appellant shall notify the board of appeal in writing of the appeal, and the board shall within thirty (30) days after the receipt of the notice, transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. Any parties unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record. The cost of transcribing the record shall be paid by the appellant.

23-27.3-127.2. Local board of appeals.

(a) A board of appeals shall be appointed by each municipality. The board shall consist of the following five (5) members: one shall be an architect; two (2) shall be professional engineers; one shall be a builder or superintendent of construction; and one shall be a member of the general public. A member of a board of appeals of one municipality may also be a member of a board of appeals of another municipality. An aggrieved party as defined in § 23-27.3-127.1 (b)(2)(i) - (b)(2)(vi) may appeal an interpretation, order, requirement, direction, or failure to act under this code by a local official of a city or town charged with the administration or enforcement of this code of any of its rules and regulations, to the local board in that city or town.

(b) If there is no local board and an appeal is filed with the state board of appeals in accordance with § 23-27.3-127.1, all stenographic costs of the appeal shall be reimbursed to the budget account of the board by the municipality.

<sup>38</sup> RIGL 23-33 Elevators, Escalators, And Dumbwaiters  
23-33-15. Order to cease operation or make repairs.

If as a result of inspection, the chief shall determine that any elevator or device is in such a condition as to be unsafe, and that the danger is imminent, the chief shall order the operation of that elevator or device to be stopped immediately, and the certificate revoked, and shall physically render the unit inoperable, and thereupon operation shall be stopped until the elevator or device or the defective part or parts thereof shall be repaired or renewed and put in safe condition, and a new certificate thereof under the provisions of this chapter issued by the chief or compliance inspector. Where there is no immediate danger, the chief or compliance inspector shall notify the owner or the owner agent to remedy the defect or defects within such reasonable time as he or she may prescribe, and if the defect or defects are not remedied within the prescribed time, the use of the elevator or device shall be discontinued at the expiration thereof, and the certificate revoked until the elevator or device is put in a safe condition and a new certificate is issued by the chief or compliance inspector.

<sup>39</sup> RIGL 28-20-19 Occupational safety and health review board.

(a) The occupational safety and health review board is hereby established.

## Regulations for Investigation / Hearings under RIGL 42-87-5(b)

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- (b) The review board shall be composed of three (3) members appointed by the governor, one of whom shall be a qualified member of the occupational safety profession, nominated by the director of labor and training, one shall be a qualified representative of the occupational health profession, nominated by the director of health, and and one shall be a representative of the public who acts as chairperson of the review board.
- (c) The term of office of each member of the review board is six (6) years, except that of the members of the review board first taking office, one is appointed for six (6) years, one is appointed for four (4) years and one is appointed for two (2) years.
- (d) The review board shall conduct hearings pursuant to [chapter 35](#) of [title 42](#) in all cases involving contests of the decisions of the director, and the Commission for occupational safety and health made pursuant to this chapter and chapter 19 of this title.
- (e) Two (2) members of the review board constitute a quorum, and official action can be taken only on the affirmative vote of at least two (2) members.
- (f) The review board shall set its own rules established pursuant to the requirements of [chapter 35](#) of [title 42](#).
- (g) The members of the review board will be paid at a daily rate as determined by the director.
- (h) Clerical and other assistance that may be required by the review board shall be furnished by the director.

<sup>40</sup> RIPL 2002 Chapter 132 Section 3. Upon the transfer of the functions of the handicap accessibility unit of the state building Commission to the governor's Commission on disabilities, the governor is hereby authorized to transfer or reallocate in appropriations and any other property of the handicapped accessibility unit. Any proceedings or other business or matters, undertaken or commenced prior the effective date of this act [August 1, 2002] by the handicap accessibility unit and pending on the effective date of this act, may be conducted and completed by the governor's Commission on disabilities.