

**Providence External Review Authority
Administrative Rules**



Rule 1. Establishment

A. Source of Authority.

The Providence External Review Authority (PERA), hereinafter referred to as the "Authority," was established by Ordinance of the City of Providence on November 8, 2002. No 614 Chapter 2002-39.

B. Effective Date.

The effective date of the following Administrative Rules is November 30, 2004.

C. Purpose.

The purpose of the following Administrative Rules is to facilitate and guide the independent civilian police review process in Providence, Rhode Island. This process shall be based on due regard for the constitutional and legal rights of all persons, and shall promote the highest possible degree of mutual respect between the Providence Police Department and the community. To achieve this purpose, the Authority shall receive, consider, investigate and make a determination regarding complaints or grievances brought by the public against any Providence police officer. These rules provide for the impartial, independent and prompt investigation and disposition of complaints and grievances in a manner, which protects the public and individual officers of the Providence Police Department who may become involved in such complaints.

The Authority shall encourage members of the public to bring forward legitimate complaints concerning abuse and improper conduct. The desired result of the Authority and of these rules is to strengthen public confidence and to assure that the highest standards of professionalism are observed in the handling and disposition of allegations of abuse of police authority.

The procedures set forth in these rules shall be liberally construed to achieve these objectives.

D. Application.

The following Administrative Rules shall be employed by the Authority to govern the receipt and processing of complaints. The Authority shall provide information concerning its findings of fact, determinations and other relevant information, subject to the provisions and limitations of the law.

E. Severability.

If any provision of these Administrative Rules or the application thereof to any person or circumstance is held to be invalid, such invalidity shall

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not affect other provisions of the rule or application of any other part of this regulation, which can be given effect without application of the invalid provision. To this end the provisions of all sections, subsections, or subdivisions herein and the various applications thereof are declared to be severable.

Rule 2. Scope of Authority.

The Authority shall receive complaints that allege misconduct by a police officer or officers, including, but not limited to, the following:

A. **Use of excessive force.**

"Excessive force" shall mean the use of greater physical force than reasonably necessary to repel an attacker or terminate resistance. It does not include force that is reasonably necessary to effect a lawful purpose.

B. **Inappropriate language or conduct.**

"Inappropriate language or conduct" shall mean harsh, violent, profane, or derogatory language or any action that demeans the dignity of an individual, including, but not limited to, profanity, racial, ethnic or sexist slurs.

C. **Harassment.**

"Harassment" shall mean repeated, unwarranted verbal or physical annoyances, threats, demands, or abuse (whether physical or verbal).

D. **Discrimination.**

"Discrimination" shall mean bias or other discriminatory conduct in the provision of police services on the basis of race, color, creed, religion, ancestry, national origin, sex, sexual or gender orientation, disability, age, gender, or economic status.

Rule 3. Definitions.

Whenever used in these Rules, unless plainly evident from the context that a different meaning is intended, the following terms mean:

A. **Adequate and timely.**

Such length of time as may fairly, properly, and reasonably be allowed or required, having regard to the nature of the act or duty, or of the subject matter, and to the attending circumstances.

B. **Authority.**

The Providence External Review Authority. The Authority includes a Board of Directors as defined by the ordinance.

C. **Board.**

The Board of Directors of the Providence External Review Authority, which consists of twenty members.

D. **Chief.**

The Chief of Police in the City of Providence.

E. **Civilian**

For the purposes of this section, as civilian is a person who is not a sworn officer of any law enforcement agency.

F. **Complainant.**

The person filing a complaint with the Providence External Review Authority who alleges that he or she has been aggrieved by the conduct of a sworn officer or officers of the Providence Police Department.

G. **Complaint.**

The allegation, signed and sworn, by a complainant regarding an officer or officers of the Providence Police Department.

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H. **Confidential Data.**

Non-public (meaning not for publication) information that is organized or collected for a specific purpose. With respect to PERA, confidential data is information, which is compiled, organized and is or will be used as the basis of the Authority's decision with regard to a complaint.

I. **Day.**

Monday through Friday, except holidays recognized by the City of Providence during regular business hours.

J. **Department.**

The Providence Police Department.

K. **Executive Director.**

A person hired by the Board, to manage the ongoing operation of the Authority and to execute functions to aid the Authority in carrying out its purpose.

L. **Final Disposition.**

A final disposition occurs when the Chief makes a final disciplinary decision, regardless of the possibility of any later proceedings or court proceedings. In the case of proceedings before the Providence Civil Service Commission or arbitration proceedings arising under collective bargaining agreements, a final disposition occurs at the conclusion of the Civil Service Commission or arbitration proceedings.

M. **Hearing Panel.**

The hearing panel consists of five (5) board members appointed by the Authority Chairperson to weigh and consider all reliable and credible evidence presented and to file a report containing findings of fact and a determination of whether the complaint is sustained. No more than one (1) former law enforcement officer shall serve on any hearing panel.

N. **Investigator.**

Investigators hired by the Authority shall be civilians who have appropriate prior experience or training.

O. **Mediation.**

An informal dispute resolution process, facilitated by a neutral third party, attended by the complainant and the officer for the purpose of fully, thoroughly, and frankly discussing the alleged misconduct and attempting to arrive at a mutually agreeable resolution of the complaint.

P. **Mediator.**

A neutral third party in contract with the Authority to mediate disputes between complainants and officers.

Q. **Order to Cooperate.**

The Providence Police Department and all other City of Providence employees and officials by ordinance shall, except as expressly prohibited by any other law, respond promptly to any and all reasonable requests for information, for participation in hearings, and for access to data and records for the purposes of enabling the Authority to carry out its responsibilities. The failure by any official or employee of the Providence Police Dept. or by any other City of Providence employee or official to comply with such requests for information, participation, or access shall be deemed an act of misconduct.

R. **Perjury.**

A willful verbal or written statement regarding a fact, opinion, belief or knowledge that is made under oath, by any witness as part of his or her sworn testimony at a PERA proceeding, where that witness knows that the statement that he or she has made is untrue.

S. **Personal Knowledge.**

Direct knowledge of the allegations or of the incident from which the

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allegations arose, known by the victim of the alleged misconduct by an officer or by a witness to that alleged misconduct.

T. **Preponderance of the Evidence.**

The greater weight of the evidence supports the decision.

U. **Tolled.**

When time limitations established within these rules are suspended or temporarily stopped because of other procedures.

V. **Vulnerable Person.**

A person who is unable or unlikely to report abuse or neglect without assistance because of impairment of mental or physical function or emotional status.

Rule 4. Administration

A. **Interpreters**

- a. The Executive Director shall have discretionary authority to provisionally qualify, utilize and compensate interpreters. A party in need of an interpreter shall give notice to the Executive Director within seven (7) days of receipt of the Notice of Hearing so that appropriate arrangements may be made.
- b. The Rules of confidentiality shall apply to an interpreter utilized in any stage of the review process including, but not limited to, a mediation session, interview, panel hearing or reconsideration hearing. The interpreter shall not have had any personal or professional involvement with any of the issues of the particular case prior to the hearing.

B. **Liability of Board Members.**

No member of the Authority shall be liable to any person for damages or equitable relief by reason of any action taken or recommendation made by a board member or by the Authority, if the action taken was within the scope of the functions of the Authority, and if the board member was not in violation of the law and acted in the reasonable belief that such member's action was warranted by the facts known to such member after reasonable effort to obtain the facts of the matter.

C. **Amendment of Rules.**

All rules and any amendments thereto, shall be promulgated after a public hearing at which interested persons may present written and oral comments on the proposed rules. The Authority shall, at least thirty (30) days prior to the date set for the hearing, give notice of its intention to adopt rules by publishing a notice of its intention to promulgate or amend rules in a newspaper of general circulation and by making copies of the proposed rules/changes available to the public.

D. **Assistance and Information from Authority.**

If any party desires assistance or information, which can legally be made public, he or she may request such from the Authority. This may include, but is not limited to, assistance in filling out forms; having rules read, explained and/or interpreted; distributing of public information; and keeping the parties to a complaint regularly informed on the progress of their particular case.

Rule 5. Filing a Complaint.

A. Complaint Filing.

Any person, including, but not limited to, an alleged victim, a witness, a parent, legal guardian, domestic partner, or an immediate family member of a victim of alleged police misconduct may file a complaint. All complaints shall be filed in writing with the Authority by submitting said complaint at a location designated by the Authority. Upon probable cause, the Authority may initiate an investigation into possible police misconduct.

B. Period of Limitation.

A complaint must be filed with the Authority within one (1) year of the time of the alleged misconduct.

C. Writing and Signature Required.

No complaint will be deemed filed with the Authority until it has been reduced to writing, signed by the complainant and received by the Authority. Until a complaint is reduced to writing and signed by the complainant, the complaint shall be treated as a tentative complaint and held in a "pending" file until a formal complaint is made.

D. Penalty of Perjury.

Complaint forms will conclude with the following words: "I hereby certify that to the best of my knowledge, and under penalty of perjury, the statements made herein are true."

E. Information Required.

The complainant must provide the following information:

- a. Name, date of birth, contact information (address and phone number if any) and any alternate means of contact. If a complaint is filed on behalf of someone else, this information concerning the minor, deceased person or vulnerable adult must also be filed.
- b. Statement setting forth the allegation(s), including date, time and location of the alleged misconduct and any other pertinent details.
- c. Identification of police officer (badge and/or name and/or description). The assigned investigator will assist the complainant with identification in the event that a complainant is unable produce a badge number or name.

F. Amendment of Complaint.

A signed complaint may be amended throughout the course of the investigation. Circumstances under which a complainant may amend his/her complaint include, but are not limited to, new evidence having been obtained, such as a new witness coming forward or the recollection of pertinent information. This amendment must also be in written form and signed under penalty of perjury.

G. Withdrawal of Complaint.

A complainant may withdraw from the review process at any point in the proceedings by submitting a written, dated and signed notice to the Authority of the complainant's intention to withdraw. The signed withdrawal statement must include an affirmation that the complainant has not been coerced or intimidated into withdrawing the complaint.

In the case of such withdrawal, The Executive Director may give the case file to the Chief of Police and/or the Attorney General, if:

- a. The Executive Director determines that the file contents could be material in a criminal case;
- b. The Chief makes a request for the file.
- c. The Attorney General makes a request for the file.

H. Re-filing of the Complaint.

The stopping of the complaint process does not prevent the complainant

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from filing another complaint within the prescribed limitations period of the Providence Code of Ordinances, and these Administrative Rules.

Rule 6. Preliminary Review.

A. File Creation.

A file will be opened for each complaint as of the date the signed complaint is received in the office of the Authority.

B. Notice of Receipt of Signed Complaint

- a. The complainant may be provided with a copy of his/her signed complaint upon his/her request.
- b. Notice of the filing of a signed complaint and of the specific allegations contained therein will be forwarded to the officer and the Chief of Police.
- c. A copy of the Administrative Rules delineating the procedures will be forwarded to all parties upon their request.
- d. Information regarding the possibility of mediation will be forwarded to all parties along with the notice of receipt of the complaint.

C. Consultations.

- a. As part of the preliminary review, the Executive Director shall consult with the Chief, or the Chief's designee, on all pertinent matters regarding the pending review. The Executive Director and the Chief shall discuss the possibility of a criminal investigation and charge.
- b. As part of the preliminary review, the Executive Director shall also consult with the Attorney General to determine if there is a related current criminal investigation.
- c. After the above-mentioned consultations, the Executive Director has the discretion to hold the process in abeyance if such review or investigation might impede or harm a criminal investigation or a pending Internal Affairs Bureau investigation. If the Authority's investigation is held in abeyance, the Authority time constraints shall be tolled. During such time as the Authority may hold its proceedings in abeyance, the Authority shall request the Chief to take appropriate steps to assure preservation of the following terms of evidence:
 - i. The original Emergency Communications Center ("ECC") tapes relevant to the complaint.
 - ii. All police reports, records, evidence and any other documentation relevant to the case.
 - iii. Names, addresses, telephone numbers, and any statements of other information from witnesses.

D. Requirement of Cooperation.

All municipal boards, bureaus, commissions, departments and employees shall respond promptly to any and all lawful requests for municipal information sought for evidentiary hearings, and for access to data and records for the purpose of enabling the authority to carry out its responsibilities. The failure of any official or employee to respond to lawful requests for such information and data shall be deemed an act of misconduct. This is to include sworn officers of the Providence Police Department.

E. Copies of Sworn Statements.

The officer, complainant and any witnesses, shall, upon their request, be given a true and correct copy of their own signed, sworn statement(s) without unnecessary delay.

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F. **Conclusion of Preliminary Review.**

At the conclusion of the preliminary review, the Executive Director shall make his/her recommendation for appropriate action.

G. **Time Limit for Preliminary Review.**

The Preliminary Review shall be completed within thirty(30)days of the date a signed complaint was filed unless appropriate reasons for delay are enumerated.

H. **Completion.**

Upon completion of the preliminary review the Executive Director shall recommend to the authority, in writing, one of the following actions be taken:

- a. The complaint be dismissed (and the reason(s) therefore be reported to the Authority).
- b. The complaint be forwarded to mediation.
- c. The complaint be transmitted for a full investigation.

Rule 7. Mediation

A. **Availability.**

The Authority shall inform all complainants and officers of the possibility of mediation as an alternative to the Authority's processes. Such information shall be included with the notice of the receipt of the signed complaint pursuant to Rule 6.B.

B. **Agreement Required.**

Both the complainant and the officer must agree to mediation for mediation to proceed. If at any point during the investigation, or while a complaint is pending before the Board, a party requests mediation, the Authority shall inform the other party of the request for mediation and shall inquire as to the other party's interest in mediation.

C. **Scheduling.**

If the complainant and officer agree, the Authority shall schedule a mediation session at the earliest convenient time. Written notice of the time, date and location of the first mediation session shall be provided to each party and the Chief of Police.

D. **Procedure.**

- a. The mediation session(s) will consist of the complainant, the officer and the mediator. In the case of a minor, a parent or legal guardian may be present. In the case of a vulnerable person, a family member, conservator, legal guardian or other individual designated by the vulnerable person may be present. If an interpreter is requested by either party, arrangements shall be made to have one present. No other person may be present. No record of the proceedings will be taken.
- b. Procedures and guidelines for mediation will be established at the beginning of the mediation process through agreement of all participants.
- c. The mediation session(s) will continue as long as the mediator and the parties feel progress is being made in the resolution of the issues. The mediation process shall terminate when either party announces its unwillingness to continue mediation, or when the parties sign an agreement setting forth the resolution of the disputed issue(s).
- d. No record will be made of the mediation proceedings, and no information discussed shall be used in subsequent proceedings.
- e. A notice shall be sent to the Chief informing him/her both that the mediation was successful and the complaint was dismissed, or that the mediation was unsuccessful and the matter has been reactivated before the Authority.

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- f. A copy of the mediation agreement will not be sent to the Chief.
- g. The Authority shall monitor the mediation process and the implementation of the mediation agreement.
- h. If one party fails to abide by the mediation agreement, the aggrieved party may contact the Authority within 15 days of violation of the agreement to reactivate the matter before the Authority.

E. Tolling of Time.

In no case shall the time for mediation extend beyond thirty (30) days from the date the Authority has received notice of willingness to participate in mediation from both the complainant and the officer. In order to facilitate and encourage mediation, the Authority time limitations and deadlines will be tolled during mediation and for the period of time the mediation agreement is being implemented.

Rule 8. Investigation

A. Initiation.

Upon determination that a full investigation is warranted, the complaint shall be transmitted to an Authority investigator. An investigation shall be completed within one hundred twenty (120) days of the date that the complaint was filed unless appropriate reasons are enumerated. The Executive Director may upon request of the investigator, extend this deadline by not more than sixty (60) days. The application of this deadline may be held in abeyance during such time as the Executive Director determines that an investigation might impede or harm a related criminal investigation or for other enumerated reasons.

B. Completion.

Upon completion of such investigation, the Executive Director may dismiss the complaint (and in such event he/she shall file a written statement providing reasons for such dismissal) or forward the same for a full evidentiary hearing.

Rule 9. Conduct of Evidentiary Hearings.

A. Notice of Hearing.

Authority staff shall give notice of the date and time of the hearing and the membership of the Hearing Panel, to the complainant and the officer within two (2) business days of the appointment of the panel.

B. Duties of Hearing Panel.

It shall be the duty of each Hearing Panel to weigh and consider all reliable and credible evidence, to conduct a fair and impartial hearing, to assure that the facts are fully elicited, and to adjudicate all issues and avoid undue delay.

C. Time.

The Hearing Panel shall make all reasonable efforts to complete evidentiary hearings and render a written decision within sixty (60) days of the completion of the investigation.

D. Representation of Parties & Presentation of Evidence.

The authority's legal counsel shall present evidence to the panel. The police officer may be represented by an attorney and/or union representatives who may present evidence and conduct cross-examination of witnesses.

E. Standard of Proof.

The hearing panel shall determine whether the misconduct alleged in the

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complaint occurred. The standard of proof shall be "preponderance of the evidence".

F. **Subpoenas.**

At the request of legal counsel for either party or the Hearing Panel, the Executive Director shall compel the presence of witnesses and/or documents at evidentiary hearings by applying to the City Council for the issuance of subpoenas and, when appropriate, may request that the City Council seek the appropriate court sanctions against anyone who fails to comply with any subpoena so issued.

G. **Affirmative Defense.**

It shall be an affirmative defense for the officer that he/she acted in accordance with the rules, regulations and training of the Police Department.

H. **Findings of Fact and Determination.**

Within thirty (30) days of the completion of an evidentiary hearing, the Hearing Panel shall issue a written report containing findings of fact, a determination of whether or not the complaint has been sustained by a preponderance of the evidence and, if applicable, the level of violation described in the disciplinary matrix and a recommendation of discipline.

a. Findings of Fact.

The Hearing Panel shall determine each and every material fact raised in the complaint and reduce these findings to writing.

b. Determination.

For the determination, the Hearing Panel shall make one of the following decisions:

1. Officer exonerated because:

- i. The facts alleged in the complaint are true but do not constitute misconduct by the officer;
- ii. The facts alleged in the complaint are not true.

2. Insufficient evidence exists to sustain the complaint.

3. Complaint sustained.

c. Sustaining of Complaint.

When a complaint is sustained, the findings of fact and the recommendation for discipline shall be transmitted to the Chief of Police. The Chief may impose discipline based upon the level of violation as found in the disciplinary matrix. The Chief of Police shall provide the Authority, the City Council, and the Mayor with a written explanation of the reason(s) for his/her decision. The Hearing Panel report and the Police Chief's explanation for his/her decision shall be available to the public provided that the name of the complainant and/or respondent shall be kept confidential.

d. Notice.

Upon completion of the written report the Authority shall send notice of the Hearing Panel's determination to the complainant and the officer.

Rule 10. Composition of Evidentiary Hearing Panel

A. **Selection of Hearing Panel.**

A panel will be randomly chosen from those Authority members who are eligible and available to serve during the duration of the hearing. The Chairperson of the Authority shall designate a foreperson of the panel.

B. **Disqualification for Personal Bias or Prejudice.**

A Hearing Panel member shall be disqualified from sitting on that Hearing Panel if he/she has a demonstrated personal bias or prejudice, or the appearance thereof, in the outcome of the complaint. Personal bias or

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prejudice does not include holding or manifesting any political or social attitude or belief, which does not preclude objective consideration of a case on its merits. Examples of personal bias or prejudice include, but are not limited to:

- a. Familial relationship, close friendship or close working relationship with parties material to the complaint.
 - b. Witnessing events material to the inquiry.
 - c. Being a party to the complaint.
 - d. Holding a bias for or against a particular party that is sufficient to impair a panel member's impartiality.
 - e. Having a financial interest in the outcome of the hearing.
- C. **Discretionary Withdrawal by Hearing Panel Member.**
A member of a Hearing Panel may withdraw from that panel whenever that member deems himself/herself to be disqualified.
- D. **Request for Disqualification by a Party to the Case.**
a. Within five (5) days of receipt of the notice of composition of the Hearing Panel, the Executive Director, the complainant or the officer may file with the Chairperson of the Authority a written request for disqualification of one or more members of the panel.
b. A request for disqualification shall be based upon an allegation of personal bias or prejudice. When a challenge for cause is filed, the Chairperson shall contact the challenged panel member(s) as soon as possible. If the Authority Chairperson and a challenged panel member agree that there is good cause for disqualification, the member shall withdraw and the Chairperson shall appoint another Board member as a replacement.
c. If a challenged panel member does not agree that there is good cause for disqualification, the Authority Chairperson shall decide the merits of the challenge and replace the member or not. If a challenge to a panel member is rejected, the written request for withdrawal and the Chairperson's written response shall be incorporated into the record.
- E. **Replacement of Panel Member.**
In the case where a member is excused from a Hearing Panel, the Authority Chairperson shall appoint a replacement from the available pool.

Rule 11. Reconsideration

- A. **Time**
Within thirty (30) days of receipt of the Hearing Panel's Findings of Fact and Determination, either the complainant or the officer may submit a written request to the Board for reconsideration. The Board shall forward a copy of the written request to the other party or parties.
- B. **Content.**
The request for reconsideration shall state the reasons justifying reconsideration.
- C. **Procedure.**
a. **Scheduling.** The Board shall consider the request at its next regularly scheduled meeting that is not less than twenty (20) days after the filing of the request.
b. **Notice.** The Board shall provide written notice to all parties of its intention to consider the request at least ten (10) days prior to the meeting at which the request will be considered.
c. **Disqualification of a Board Member.** A Board member shall be disqualified from discussion concerning the request if he/she has a demonstrated personal bias or prejudice, or the appearance thereof, in

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the outcome of the complaint. A Board member may disqualify himself/herself, or either party may request a Board member's disqualification as provided in Rule 10.D.

A. **Decision of the Board.**

After discussion, the Board shall make one of the following decisions:

- a. The decision of the Hearing Panel is sustained.
- b. The decision of the Hearing Panel is rejected and the complaint is either dismissed or forwarded to the Chief for the imposition of discipline as provided in Rule 9.
- c. Based upon a finding of newly discovered evidence, the case is remanded for further investigation and, if appropriate, referred to the Hearing Panel for further proceedings.

E. **Time Limit.**

The Board shall issue a decision within forty-five (45) days of its consideration of the request.

Rule 12. Case Record

A. **Maintaining the Record.**

The Hearing Panel foreperson shall maintain the official record of the case file until the issuance of the Findings of Fact and Determination. Upon issuance of the Findings of Fact and Determination, the Executive Director shall maintain the official record of the case file. The Executive Director shall retain the case file according to the Authority's record retention schedule.

B. **Content.**

The Record shall contain:

- a. The complaint.
- b. Any and all notices or other procedural matters that have been reduced to writing.
- c. All investigatory data collected.
- d. The Findings of Fact and Determination.