94-348, 05-071 PROPOSED CHANGES TO RULES

Sec. 1. Me. Hum. Rights Comm'n and Me. Dept. of Educ. Joint Reg., Chapter 4-A, is revised as follows:

4-A.01 GENERALLY

Pursuant to ~~Title~~ 5~~,~~ M.R.S.A. § 4603 the Maine Human Rights Commission and the Commissioner of Education adopt this rule as a companion procedural rule to Chapter 4 on Equal Educational Opportunity. This rule shall govern the procedure to be followed in processing claims of unlawful educational discrimination filed with the Commission.

4-A.02 DEFINITIONS

All terms used in this rule, unless the context otherwise indicates, shall have the same definition as in the Maine Human Rights Act, ~~Title~~ 5~~,~~ M.R.S.A. §§ 4551, *et seq*. (the Act), and applicable provisions of Title 20-A, Maine Revised Statutes.

A. Commission: "Commission" shall mean the Maine Human Rights Commission.

B. Educational Institution: "Educational institution" shall mean any public school or educational program, any public postsecondary institution, including the University of Maine and the Maine Maritime Academy, and any private school or educational program approved for tuition purposes if both male and female students are admitted, and the governing body of each such school program. The governing body shall include, ~~as appropriate~~but not be limited to, school committees, boards of directors ~~of school administrative districts~~, regional boards of vocational regions, the boards of trustees of the University of Maine and Maine Maritime Academy, the State Board of Education for the vocational technical institutes, the Commissioner of Education for schools in the unorganized territory and the Governor Baxter School for the Deaf and the board of trustees or directors of private schools or programs.

C. Unlawful educational discrimination: "Unlawful educational discrimination" shall mean action on the basis of sex to:

(1) Exclude a person from participation in, deny a person the benefits of, or subject a person to, discrimination in any academic extracurricular, research, occupational training or other program or activity;

(2) Deny a person equal opportunity in athletic programs;

(3) Apply any rule concerning the actual or potential family or marital status of a person or to exclude any person from any program or activity because of pregnancy or related conditions;

(4) Deny admission to the institution or program or to fail to provide equal access to and information about an institution or program through recruitment; or

(5) Deny financial assistance availability and opportunity.

D. Approved for tuition purposes: An institution "approved for tuition purposes" shall mean any school or educational program approved by the Commissioner of Education for the receipt of public funds pursuant to ~~Title~~ 20-A M.R.S.A.~~,~~ §§ 2951 and 7204(4)~~52~~.

E. Public School: "Public school" shall mean an elementary or secondary school or special education or alternative program operated by a school administrative unit or other public agency.

4-A.03 COMPLAINTS

A. Who May File

(1) Any person who believes that he/she has been subjected to unlawful educational discrimination may file a complaint with the Maine Human Rights Commission (the Commission).

Where the complainant is a minor or legally incompetent person, the complaint shall be filed by her/his~~/her~~ parent or legal guardian or, if none, by the adult with whom the complainant resides and who exercises parental responsibilities.

(2) Any employee of the Commission may file a complaint with the Commission alleging an act or practice of unlawful educational discrimination.

B. Contents

A complaint should briefly set forth the facts and circumstances surrounding the alleged discrimination.

C. When to File

A complaint of discrimination must be filed with the Commission not more than ~~six (6) months~~300 days after the act of alleged discrimination occurred.

D. Where to file

Complaints may be filed at the office of the Maine Human Rights Commission, 51 State House Station, Augusta, Maine 04333-0051~~, or at any of its field offices~~.

E. How to file

Complaints may be filed in person or by mail by filling out a form provided by the Commission and shall be under oath.

Upon request, Commission staff will assist in the preparation of the necessary complaint forms. Aggrieved persons may provide information by mail, telephone, or email. Commission staff may request that intake forms be prepared and submitted. If the information received alleges a violation of the Act, Commission staff will reduce the information to writing on the appropriate complaint form and send it to the aggrieved person to be notarized and filed with the Commission.

F. Amendment of complaints.

Complaints may be amended to cure technical defects or omissions, including failure to swear to the complaint under oath before a Notary Public, or to clarify and amplify allegations made therein. Such amendments and amendments alleging additional acts that constitute unlawful practices related to or growing out of the subject matter of the original complaint will relate back to the date the complaint was first received.

~~F.~~

G. Withdrawal of Complaints

(1) A complaint may be withdrawn at any time, by written request, prior to the issuance of a s~~S~~tatement of f~~F~~inding by the Commission, by the person~~s~~ who originally filed it,~~;~~ provided, however, that where the investigation and processing of a complaint have been completed prior to the receipt of a written request for withdrawal, withdrawal is subject to ~~approval of the~~ Commission approval. Upon notification of approval of withdrawal, the Commission staff shall cease its investigation.

(2) Withdrawal of an individual complaint, however, will not necessarily preclude the investigation and processing of any complaint filed by an employee or member of the Commission ~~which~~that alleges the same acts of discrimination.

H~~G~~. Administrative Dismissal

The Commission's Executive Director may, in ~~his/~~her/his discretion, administratively dismiss complaints of unlawful educational discrimination for such reasons as:

(1) lack of jurisdiction;

(2) failure to substantiate the complaint of discrimination;~~,~~

(3~~2~~) failure to file a~~the~~ complaint of discrimination within ~~six (6) months~~300 days of the date of alleged discrimination;

~~,~~(4~~3~~) failure by complainant to proceed or cooperate with the investigation; or

~~,~~(5~~4~~) ~~failure by complainant to execute documents required by the Commission, and (5)~~ failure by complainant to accept reasonable offers to resolve the allegations in the complaint.

Immediately following administrative dismissal, the Commission shall notify the complainant and the respondent of its action, and shall inform the complainant of ~~his/~~her/his rights to proceed pursuant to ~~Title 5,~~5 M.R.S.A. § 4621 and of the right to file a separate complaint with the Commissioner of Education pursuant to ~~Title~~ 20-A M.R.S.A. § 258-A~~,~~ ~~§§6801 and 15518~~ and the rules and policies of the Department of Education governing the investigation and resolution of complaints of discrimination on the basis of sex.

4-A.04 NOTIFICATION

Whenever a complaint has been filed, pre-screened, notarized, and assigned a case number, the educational institution against which the complaint has been filed~~eld~~, referred to hereafter as the respondent, will be notified and provided with a copy of the complaint. Notification shall be given to the chair of the educational institution's governing board and the chief administrative officer of the educational institution. The complainant will be provided with a copy of the notification. The notice will advise the parties of time limits applicable to complaint processing under this chapter and of the procedural rights and obligations of the parties under the Act and this chapter. The notice will advise the parties of the complainant's right to commence a civil action in the Superior Court. The notice will advise the respondent that it is unlawful to discriminate against any person because the person made a complaint or testified, assisted, or participated in an investigation, proceeding, or hearing under the Act. The Commissioner of Education shall also receive notice of any allegations of unlawful educational discrimination in all public schools and programs and in private schools and programs approved for tuition purposes.

4-A.05 REFERRAL TO LOCAL GRIEVANCE PROCEDURES

A. Referral for Action Through Local Grievance Procedure

The Commission and its representatives shall refer complaints to the respondent educational institution for ten (10) days to enable the grievance procedure established by the educational institution to review the complaint and resolve the matter with the complainant, prior to investigatory action or settlement discussions by the Commission or its representatives.

B. Exceptions

The Commission is not required to refer any complaint where the educational institution has not established a grievance procedure or where the complaint alleges sexual harassment by a member of the educational institution.

4-A.06 EARLY RESOLUTION SETTLEMENT

A. Settlement Discussion

After notification and prior to a determination of whether there are reasonable grounds to believe that unlawful educational discrimination has occurred, ~~a designated member or employee of the Commission as representative of the Commission~~the Commission's Compliance Officer or her/his designee will engage in a settlement discussion. The Com~~mission's representative~~pliance

Officer will encourage written agreements between the parties to resolve the matter.

B. Early Resolution

Prior to a determination by the Commission of whether there are reasonable grounds to believe that unlawful discrimination has occurred, i~~I~~f the matter is resolved to the mutual satisfaction of the complainant and respondent ~~as evidenced in a signed written agreement~~ and to the satisfaction of the Commission's Executive Director or her/his designee, the Executive Director or her/his designee shall have the authority to sign any settlement agreement on behalf of the Commission, together with the parties. When the Commission agrees in any negotiated settlement not to process that complaint further, the Commission's agreement shall be in consideration for the promises made by the other parties to the agreement. T~~Commission's representative, t~~he complaint will be dismissed by the Executive Director or her/his designee upon ascertainment that the terms of the agreement have been met.

B-1. In the alternative, the Commission's Compliance Officer or her/his designee may facilitate a settlement between the parties resulting in the withdrawal of the complaint pursuant to 4-A.03(G).

C. Confidentiality

The content of these predetermination discussions and any final settlement agreement ~~may not be released to the public~~are confidential and may not be disclosed, or used in any subsequent civil or criminal proceeding, without the written consent of the parties, except in a civil action filed by one party alleging a breach of the settlement agreement. Notwithstanding this provision, the Commission and its employees have discretion to disclose such information to a party as is reasonably necessary to facilitate settlement.

4-A.07 INVESTIGATION

A. Preliminary Investigation

After a complaint has been filed, pre-screened, notarized, and assigned a case number, a ~~representative of the Commission~~ Commission investigator will conduct such preliminary and impartial investigation as is necessary. An investigation may involve fact-finding meetings and interviews with the complainant, the respondent, and any other persons whose statements may provide a source of evidence. The ~~Commission's representative~~investigator may record, by mechanical, electronic or other means, all statements by all persons involved.

B. Commission's Right of Access

The Commission's ~~representative~~investigator shall have access at all reasonable times to the premises, records, documents, individuals, and other evidence or possible sources of evidence and may examine, record, and copy such materials and take and record the testimony or statements of such persons as are reasonably necessary for the furtherance of the investigation. The Commission's investigators are hereby delegated the authority to administer oaths.

The Commission and any representative shall have access to individual educational records, only with the permission of parents or students of majority age, in educational institutions governed by the Family Educational Rights and Privacy Act of 1974, the Education of All Handicapped Children Act of 1975, and ~~Title~~ 20-A M.R.S.A.~~,~~ § 6001~~2~~, except when a subpoena or court order has been issued.

C. Production of Evidence

Documents, records, files, or other possible sources of evidence shall be produced within ~~ten (10) business days of receipt of the~~ the time specified by a Commission representative's written request for their production, unless the person processing them demonstrates that production within the ~~ten (10) day period~~time specified would impose an unjustifiable burden. Excessive delay or failure to produce the requested materials may result in the issuance of a subpoena by the Commission for their production.

D. Subpoena Power

(1) Form: Subpoenas shall b~~he~~ issued in the name of the ~~State of Maine~~ Maine Human Rights Commission, shall designate the Commission as recipient of the material or testimony specified, and shall designate a specific time and place for the production of the documents and/or testimony.

(2) When Available: A subpoena may be used to compel testimony or the production of documents whenever there is reasonable cause to believe that those materials or the testimony of the persons are material to the complaint~~the respondent fails or refuses to comply with the provisions of Title 5, § 4612.1~~.

(3) Procedure: When the Commission's Executive Director or Commission Counsel determines that ~~a respondent has failed to comply with the provisions of Title 5, § 4612.1 and has~~there is reasonable cause to believe that testimony or documents being withheld are material to investigation of the complaint, the Executive Director or Commission Counsel~~it shall request its legal counsel to obtain~~ may issue a subpoena.

The subpoena shall include: the name and address of the respondent subject of the subpoena; if the subject of the subpoena is not an individual, the name of the senior officer or person in charge; a brief description of the documents requested and/or the name and title of the person(s) whose testimony is requested; and the date, time and place such production and/or testimony is requested.

If a subpoena is issued, notice must be given to the complainant and the respondent.
~~The request shall include: the name and address of the respondent, educational institution, the name of the chief administrative officer of the institution for records or the person whose testimony is sought, a brief description of the documents requested and/or the name and title of the person(s) whose testimony is requested; and the date, time, and place such production and/or testimony is requested.~~

~~Upon receipt of such a request, the Commission's legal counsel shall apply to the Superior Court for approval of the issuance of the subpoena.~~

(4) Service. Subpoenas may be served by any person who is not a party to the proceeding and who is not less than eighteen (18) years of age. Service shall be made by delivering a copy of the subpoena to the person named therein and tendering to that person the fees and mileage paid to witnesses in the Ssuperior Court of this State.

(5) Return: The person serving the subpoena shall make proof of service by filing the original of such subpoena and an affidavit of acknowledgment of service with the Commission. However, failure to make sure proof of service shall not affect the validity of such subpoena and service.

(6) Enforcement: If any person refuses to obey a subpoena, the Commission Counsel or her/his designee may apply to any justice of the Superior Court for an order compelling compliance with the subpoena.

(7) Opposition: Any person served with a subpoena may oppose it by applying for judicial review in Superior Court.

E. Deferral to Department of Education; Joint Investigations

Upon agreement of the complainant, or by decision of the Commission's ~~representative~~ Executive Director, and with consent of the Commissioner of Education, the complaint may be referred to the Department of Education for an investigation pursuant to that Department's procedures. The Commission's ~~representative~~Executive Director may defer further investigation and action until

completion of the investigation of the Department of Education and receipt of the Department's report and recommendations as to appropriate action.

With the consent of the Commissioner of Education and the Commission's Executive Director, a joint investigation may be pursued by the Commission and the Department.

E-1. Prior to the conclusion of an investigation, all information possessed by the Commission relating to the investigation is confidential and may not be disclosed, except that the Commission and its employees have discretion to disclose such information as is reasonably necessary to further the investigation. The complaint and evidence collected during the investigation, other than data identifying persons who are not parties, shall become a matter of public record upon issuance of a letter of dismissal or upon listing of the complaint on a published Commission meeting agenda. The complaint and evidence collected may be used as evidence in any subsequent proceeding, civil or criminal.

F. Investigator's Report

Upon completion of the investigation, the Commission's ~~representative~~investigator will make and transmit a report of the investigation, together with recommendations concerning the disposition of the complaint (hereinafter referred to as Investigator's Report) to the complainant and respondent. The Investigator's Report shall be approved for legal sufficiency by the Commission Counsel or her/his designee before it is issued. All parties to a complaint shall be given a reasonable opportunity to review and respond to all evidence considered by the Commission before the Investigator's Report is issued, but the timing of any such review shall be subject to the investigator's discretion.

The Investigator's Report on a public school or program or~~,~~ private school or program approved for tuition purposes shall also be delivered in a timely manner to the Commissioner of Education.

G. Submission of Response

Upon receipt of the Investigator's Report, the complainant and respondent shall have an opportunity to make written submissions to the Commission setting forth specific items of disagreement with the report and/or recommendations. The Commissioner of Education may also make a written submission on any report concerning public schools or programs or private schools or programs approved for tuition purposes. Written submissions shall be returned to the Commission's office within seventeen~~ten~~ (17~~10~~) working days of ~~receipt~~issuance of the Investigator's Report. Written submissions must be limited to specific items of disagreement ~~which~~that address~~es~~ the following: (1) relevant factual errors, (2)

relevant omissions of fact, and/or (3) relevant issues and questions concerning interpretation of the governing law.

H. Transmittal to Commission

At the expiration of the seventeen (17) day period, a~~The~~ Commission's representative will transmit the Investigator's Report and any written submissions to the Commission.

I. The Commission must conclude its investigation within 2 years after the notarized complaint is filed with the Commission. An investigation is concluded for purposes of this requirement upon issuance of a letter of dismissal or upon listing of the complaint on a published commission meeting agenda, whichever first occurs.

4-A.07-A COMMISSION MEETING

The Commission may allow the parties and the Commissioner of Education to make an oral presentation on information related to the complaint of discrimination at a monthly Commission meeting. Information presented must comply with 4-A.07(G). The Commission may impose time limits.

4-A.08 COMMISSION DECISION UNDER NON-EMERGENCY PROCEDURE

After considering ~~the results of~~ the Investigator's Report, ~~and~~ written submissions, if any, and other related information, the Commission will make a determination whether reasonable grounds exist to believe that unlawful educational discrimination has occurred. The Commission shall issue a Statement of Finding in support of its determination.

A. No Reasonable Grounds

If the Commission finds no reasonable grounds to believe that unlawful educational discrimination has occurred, it will enter an order dismissing the complaint. The Commission shall promptly notify the parties and provide each with a copy of its Statement of Finding.

B. Reasonable Grounds

If the Commission finds reasonable grounds to believe that unlawful educational discrimination has occurred, it will so notify the parties of its determination and provide each with a copy of its Statement of Finding. The Commission's Compliance Officer or her/his designee will then ~~will then direct its representative to~~ endeavor to resolve the matter by informal means such as conference,

conciliation, or persuasion. If the matter is resolved to the mutual satisfaction of the complainant and respondent and to the satisfaction of the Commission~~'s representative~~, as evidenced in a signed written agreement between the parties, approved by a majority of the Commission, the proceeding will be dismissed upon ascertainment by the ~~representative~~Commission's Executive Director or her/his designee that the terms of the signed agreement have been met.

C. Request for Attorney General's Opinion

If the Commission determines that it is unable to make a determination whether reasonable grounds exist to believe that unlawful educational discrimination has occurred because of legal questions it may request an Attorney General's opinion and postpone the issue and a statement of finding until receipt of an opinion. The Commissioner of Education shall be notified of any request for an opinion of the Attorney General.

D. New Investigation

If, subsequent to a finding, the Commission determines that there have been relevant factual errors or omissions of fact, that, if they are true, would likely change the finding of the Commission, it may order a new investigation of the matter. The Commission will promptly notify the parties of its decision to investigate the matter again.

4-A.09 COMMISSION DECISION UNDER EMERGENCY PROCEDURE

If the preliminary investigation of the complaint persuades the Commission's Executive Director, or~~f~~ other designated representative, that a situation comparable to those described in ~~Title~~ 5 M.R.S.A.~~,~~ § 4612(4)(B) exists, the Executive Director, or representative, shall so notify the Commission. As soon as practical after notification, the Commission will consider the matter by means of a special meeting or other appropriate method. The Executive Director or other designated employee will take all reasonable steps to notify the parties of the special meeting or other appropriate method and of their right to participate.

A. No Reasonable Grounds

If the Commission finds no reasonable grounds to believe that unlawful educational discrimination has occurred, it will issue an order dismissing the complaint. The Commission shall promptly notify the parties of the dismissal and provide each with a copy of its Statement of Finding.

B. Reasonable Grounds

If the Commission finds reasonable grounds to believe that unlawful educational discrimination has occurred, but does not believe that irreparable injury or great inconvenience will be caused to the victim or victims of such discrimination if relief is not immediately granted, it will notify the parties of its determination, provide each with a copy of its Statement of Finding, and process the complaint under its non-emergency procedures.

C. Immediate Relief

If the Commission finds reasonable grounds to believe that unlawful educational discrimination has occurred and further believes that irreparable injury or great inconvenience will be caused the victim or victims of such discrimination, it ~~will~~may request ~~its legal counsel~~the Commission Counsel or her/his designee to file a civil action in the Superior Court seeking appropriate relief. As soon thereafter as practicable, the Commission shall issue a statement of Finding in support of its determination.

4-A.10 ~~INFORMAL MEANS OF SETTLEMENT~~POST-DETERMINATION CONCILIATION

A. Conference, Conciliation and Persuasion

In conciliating a matter in which a determination of reasonable grounds has been made pursuant to the non-emergency procedures of section 4-A.08~~7(B)~~ of this rule, the Commission shall attempt to achieve a just resolution and to obtain assurances that the respondent will eliminate the unlawful educational discrimination. Disposition of a matter pursuant to this section shall be in the form of a written agreement and approved by a majority of the Commission, and notice thereof shall be sent to the parties. Upon ascertainment by the Commission's ~~representative~~Executive Director or her/his designee that the terms of the signed agreement have been met, the proceeding shall be ~~terminated~~ dismissed.

B. Participation of Commissioner of Education

The Commission shall inform the Commissioner of Education when it concludes that there exist reasonable grounds to believe that unlawful educational discrimination has occurred in any public school or program or private school or program approved for tuition purposes. The Commissioner may participate in informal conciliation efforts of the Commission. Upon request, the Commissioner shall have access to all information concerning conciliation efforts.

The Commissioner of Education shall be notified, in her/his~~/her~~ capacity as the chief administrative officer of the educational institution, of any allegations of unlawful educational discrimination in the Governor Baxter School for the Deaf,

the schools of the unorganized territory, and the State vocational-technical institutes.

C. Refusal of Respondent to Cooperate

If a respondent fails or refuses to confer with the Commission's representative, or fails or refuses to make a good faith effort to resolve any dispute, the ~~representative~~Commission may terminate efforts to conciliate the dispute. In such event, the respondent shall be notified promptly, in writing, that conciliation efforts have been terminated.

D. Refusal of Complainant to Agree

If a complainant fails or refuses to agree to the terms of a conciliation agreement or settlement ~~which~~that the Commission~~'s representative~~ believes represents a just resolution of the complaint, the Commission may execute a conciliation agreement with the respondent limited to assurances that the respondent will eliminate such unlawful discrimination and take any appropriate corrective action. The proceeding shall be ~~terminated~~dismissed upon ascertainment by the Commission's ~~representative~~Executive Director or her/his designee that the terms of the signed agreement have been met. Where the complainant is not a party to such a conciliation agreement, the execution of the agreement by the Commission and the respondent shall not limit the complainant's right to pursue other individual remedies.

E. Confidentiality of Conciliation Efforts.

~~Nothing~~Everything said or done as part of the Commission's informal endeavors to eliminate unlawful educational discrimination by conference, conciliation or persuasion is confidential and may not be disclosed ~~made a matter of public information by the Commission, the Commission's representatives, or the Commissioner of Education~~ without the written consent of the parties or used as evidence in a subsequent civil or criminal ~~procedure~~ proceeding, except in a civil action alleging a breach of agreement filed by the Commission or a party. Notwithstanding this provision, the Commission and its employees have discretion to disclose such information to a party as is reasonably necessary to facilitate conciliation. ~~This provision does not apply to disclosure by the Commission, or its representatives, of the executed conciliation agreement when in the Commission's judgment such disclosure will tend to promote good will to eliminate unlawful educational discrimination and to prevent unlawful activities in future.~~

F. Confidentiality of Third Party Names

Any Commission records ~~which~~that are public records pursuant to the Freedom of Access Act shall be kept in such a manner that they do not reveal the identity of any person who is not a party to a complaint as complainant or a person accused of unlawful educational discrimination.

4-A.11 PROCEDURE AFTER FAILURE OF CONCILIATION

A. ~~No Decision~~Failed Conciliation

If the Commission's Compliance Officer or her/his designee determines that conciliation efforts have failed, she/he ~~is unable to dispose of a matter in a manner satisfactory to a majority of the Commission, it~~ shall so notify the complainant and respondent.

B. ~~Request for~~ Legal Action

When ~~informal means of settlement~~post-determination conciliation efforts have failed, the Commission ~~will forward the matter to its legal counsel or the Attorney General with a request that~~Counsel or her/his designee is authorized to file a civil action in the Superior Court ~~be filed~~ seeking ~~the~~ appropriate relief, including, but not limited to, ~~which may include~~ temporary restraining orders and preliminary injunctions.

C. Referral to Complainant

When the Commission's legal counsel or the Attorney General Counsel or her/his designee is unable to file expeditiously such a civil action, the Commissioner shall so notify the cComplainant of his/her/his right to file a civil action pursuant to Title 5 M.R.S.A. § 4621, and make available a referral list of attorneys who have indicated an interest in undertaking such litigation. The Commission shall furnish any attorney who is retained by the complainant, upon request, with access to the investigatory case file and will provide such assistance as is reasonably possible under the existing circumstances. Referral under this subsection does not terminate the Commission's jurisdiction of the proceeding.

4-A.12 TIME LIMITS

A. Deadlines

When these regulations established any time limit for the filing, submission, or production of any document, record, file or other possible source of evidence,; or for the filing of any request with the Commission, such item must be received in the office of the Commission before the close of business on the last day of the time limit.

B. Computation of Time

In computing any period of time prescribed or allowed by this rule, the day of the act, event, or default from or after which the designated period of time begins to run shall not he included. ; tThe last day of the period shall be included, unless it is a Saturday, Sunday, or legal state or federal holiday, in which event the period shall run until the end of the next day whichthat is not a Saturday, Sunday, or legal state or federal holiday.

C. Extension of Time

The Commission's Executive Director or her/his designee, or the Commission, may extend any time limit established in this chapterrule for good cause shown, except where inconsistent with governing law, and shall notify the parties of any such extension.

4-A.13 ADVISORY RULINGS

A. Upon written request of any interested person, the Commission's Compliance Officer or her/his designee may make an advisory ruling with respect to the applicability of the Maine Human Rights Act or the rules promulgated by the Commission to that person or an actual state of facts.

B. Advisory rulings made pursuant to this section shall not be binding upon the Commission, provided that, in any subsequent civil action initiated by the Commission, any person's justifiable reliance upon the ruling shall be considered in mitigation of any civil penal damages or punitive damages sought by the Commission.

Fiscal Impact Note: This proposed rule will not impose any cost on municipalities or counties.