VOL. 60 – NO. 50 FRIDAY, NOVEMBER 22, 2013

District of Columbia REGISTER

HIGHLIGHTS

- DC Council passes Law 20-38, Criminal Record Sealing Temporary Act of 2013
- DC Council schedules a public hearing on Bill 20-58, Tenant Bill of Rights Act of 2013
- DC Public Schools schedules a public hearing on the FY2015 Budget
- DC Housing Authority updates the recertification process for public housing residents
- Office of the State Superintendent of Education announces funding availability for the Fiscal Year 2014 DC School Garden Grant (SGG)
- Office of the Deputy Mayor for Planning and Economic Development announces funding availability for the St. Elizabeths East Summer Funding Grant
- Public Employee Relations Board publishes opinions

DISTRICT OF COLUMBIA REGISTER

Publication Authority and Policy

The District of Columbia Office of Documents and Administrative Issuances (ODAI) publishes the *District of Columbia Register* (ISSN 0419-439X) (*D.C. Register*) every Friday under the authority of the *District of Columbia Documents Act,* D.C. Law 2-153, effective March 6, 1979 (25 DCR 6960). The policies which govern the publication of the *D.C. Register* are set forth in Title 1 of the District of Columbia Municipal Regulations, Chapter 3 (Rules of the Office of Documents and Administrative Issuances.) Copies of the Rules may be obtained from the Office of Documents and Administrative Issuances. Rulemaking documents are also subject to the requirements of the *District of Columbia Administrative Procedure Act,* District of Columbia Official Code, §§2-50l *et seq*., a*s* amended.

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Except in the case of emergency rules, no rule or document of general applicability and legal effect shall become effective until it is published in the *D.C. Register.* Publication creates a rebuttable legal presumption that a document has been duly issued, prescribed, adopted, or enacted and that the document complies with the requirements of the *District of Columbia Documents Act* and the *District of Columbia Administrative Procedure Act.* The Administrator of the Office of Documents hereby certifies that this issue of the *D.C. Register* contains all documents required to be published under the provisions of the *District of Columbia Documents Act.*

DISTRICT OF COLUMBIA
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COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 20-34

"Private Contractor and Subcontractor Prompt Payment Act of 2013"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 20-145 on first and second readings June 26, 2013 and July 10, 2013, respectively. Following the signature of the Mayor on August 2, 2013, pursuant to Section 404(e) of the Charter, the bill became Act 20-148 and was published in the August 16, 2013 edition of the D.C. Register (Vol. 60, page 11812). Act 20-148 was transmitted to Congress on September 23, 2013 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 20-148 is now D.C. Law 20-34, effective November 5, 2013.

PHIL MENDELSON
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Sept. 23,24,25,26,27,30

Oct. 1,2,3,4,7,8,9,10,11,15,16,17,18,21,22,23,24,25,28,29,30,31

Nov. 1,4

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 20-35

"Closing of a Public Alley in Square 77, S.O. 12-6036, Act of 2013"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 20-156 on first and second readings June 26, 2013 and July 10, 2013, respectively. Following the signature of the Mayor on August 2, 2013, pursuant to Section 404(e) of the Charter, the bill became Act 20-149 and was published in the August 16, 2013 edition of the D.C. Register (Vol. 60, page 11815). Act 20-149 was transmitted to Congress on September 23, 2013 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 20-149 is now D.C. Law 20-35, effective November 5, 2013.

PHIL MENDELSON
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Sept. 23,24,25,26,27,30

Oct. 1,2,3,4,7,8,9,10,11,15,16,17,18,21,22,23,24,25,28,29,30,31

Nov. 1,4

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 20-36

"Marriage Officiant Amendment Act of 2013"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 20-118 on first and second readings June 26, 2013 and July 10, 2013, respectively. Following the signature of the Mayor on August 6, 2013, pursuant to Section 404(e) of the Charter, the bill became Act 20-152 and was published in the August 23, 2013 edition of the D.C. Register (Vol. 60, page 12143). Act 20-152 was transmitted to Congress on September 23, 2013 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 20-152 is now D.C. Law 20-36, effective November 5, 2013.

PHIL MENDELSON
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Sept. 23,24,25,26,27,30

Oct. 1,2,3,4,7,8,9,10,11,15,16,17,18,21,22,23,24,25,28,29,30,31

Nov. 1,4

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 20-37

"JaParker Deoni Jones Birth Certificate Equality Amendment Act of 2013"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 20-142 on first and second readings June 26, 2013 and July 10, 2013, respectively. Following the signature of the Mayor on August 6, 2013, pursuant to Section 404(e) of the Charter, the bill became Act 20-153 and was published in the August 23, 2013 edition of the D.C. Register (Vol. 60, page 12145). Act 20-153 was transmitted to Congress on September 23, 2013 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 20-153 is now D.C. Law 20-37, effective November 5, 2013.

PHIL MENDELSON
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Sept. 23,24,25,26,27,30

Oct. 1,2,3,4,7,8,9,10,11,15,16,17,18,21,22,23,24,25,28,29,30,31

Nov. 1,4

COUNCIL OF THE DISTRICT OF COLUMBIA

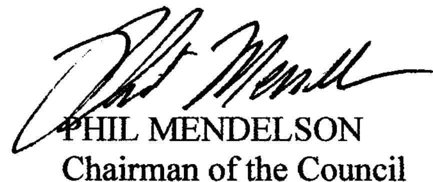
NOTICE

D.C. LAW 20-38

"Criminal Record Sealing Temporary Act of 2013"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 20-335 on first and second readings June 18, 2013 and July 10, 2013, respectively. Following the signature of the Mayor on August 9, 2013, pursuant to Section 404(e) of the Charter, the bill became Act 20-154 and was published in the August 23, 2013 edition of the D.C. Register (Vol. 60, page 12149). Act 20-154 was transmitted to Congress on September 23, 2013 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 20-154 is now D.C. Law 20-38, effective November 5, 2013.



PHIL MENDELSON
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Sept. 23,24,25,26,27,30

Oct. 1,2,3,4,7,8,9,10,11,15,16,17,18,21,22,23,24,25,28,29,30,31

Nov. 1,4

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 20-39

"Washington Metropolitan Area Transit Authority Board of Directors Temporary Amendment Act of 2013"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 20-358 on first and second readings June 26, 2013 and July 10, 2013, respectively. Following the signature of the Mayor on August 9, 2013, pursuant to Section 404(e) of the Charter, the bill became Act 20-155 and was published in the August 23, 2013 edition of the D.C. Register (Vol. 60, page 12151). Act 20-155 was transmitted to Congress on September 23, 2013 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 20-155 is now D.C. Law 20-39, effective November 5, 2013.

PHIL MENDELSON
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Sept. 23,24,25,26,27,30

Oct. 1,2,3,4,7,8,9,10,11,15,16,17,18,21,22,23,24,25,28,29,30,31

Nov. 1,4

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 20-40

"Saving D.C. Homes from Foreclosure Clarification and Title Insurance Clarification Amendment Act of 2013"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 20-268 on first and second readings June 26, 2013 and July 10, 2013, respectively. Following the signature of the Mayor on August 20, 2013, pursuant to Section 404(e) of the Charter, the bill became Act 20-156 and was published in the August 30, 2013 edition of the D.C. Register (Vol. 60, page 12304). Act 20-156 was transmitted to Congress on September 23, 2013 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 20-156 is now D.C. Law 20-40, effective November 5, 2013.

PHIL MENDELSON
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Sept. 23,24,25,26,27,30

Oct. 1,2,3,4,7,8,9,10,11,15,16,17,18,21,22,23,24,25,28,29,30,31

Nov. 1,4

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-211

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

NOVEMBER 18, 2013

To amend the District of Columbia Traffic Act, 1925 to allow for the issuance of a limited purpose driver's license, permit, or identification card to a District resident who has not been assigned a social security number or cannot establish legal presence in the United States, and to provide privacy protection for information submitted to the Department of Motor Vehicles in connection with an application for a limited purpose driver's license, permit, or identification card.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Driver's Safety Amendment Act of 2013".

Sec. 2. The District of Columbia Traffic Act, 1925, approved March 3, 1925 (43 Stat. 1119; D.C. Official Code § 50-1401.01 *passim*), is amended as follows:

(a) Section 7 (D.C. Official Code § 50-1401.01) is amended as follows:

(1) Subsection (a)(1) is amended by adding a new subparagraph (A-i) to read as follows:

"(A-i) Effective October 1, 2015, an applicant for an operator's permit shall pay an application fee of $47, which the Mayor may increase or decrease to compensate the District for processing and evaluating the application and issuing the permit. The Mayor may prorate the fee to correspond to the duration of the license issued.".

(2) Subsection (b)(2) is amended by adding the following sentence at the end: "This paragraph shall not apply to an applicant eligible for a limited purpose driver's license or permit pursuant to section 8c.".

(b) Section 7b (D.C. Official Code § 50-1401.01b) is amended as follows:

(1) Subsection (a) is amended by adding a new paragraph (1A) to read as follows:

"(1A) "Information relating to legal presence" means any information that may reveal whether a person is legally present in the United States, including whether a person's driver's license or identification card was issued under section 8c, and the documentation provided by an applicant to prove identity, date of birth, and residence in connection with an application for a driver's license or identification card.".

(2) Subsection (d) is amended as follows:

(A) Paragraph (3) is amended by striking the word "and".

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(B) Paragraph (4) is amended by striking the period and inserting the phrase "; and" in its place.

(C) A new paragraph (5) is added to read as follows:

"(5) Information relating to legal presence shall not be disclosed to any person, and shall not be disclosed to any federal, state, or local governmental entity except as necessary to comply with a legally issued warrant or subpoena.".

(c) A new section 8c (to be codified at D.C. Official Code § 50-1401.05) is added to read as follows:

"Sec. 8c. Limited purpose driver's license, permit, or identification card.

"(a) The Mayor, consistent with subsections (b) and (c) of this section, shall issue a limited purpose driver's license, permit, or identification card to an applicant who:

"(1) Has resided in the District for longer than 6 months;

"(2) Has not been assigned a social security number or is ineligible to obtain a social security number; and

"(3) Meets the requirements of this section.

"(b)(1) To obtain a limited purpose driver's license or permit in accordance with subsection (a) of this section, an applicant shall:

"(A) Provide, under penalty of perjury, proof of identity, date of birth, and residency to the Department of Motor Vehicles ("Department") as defined by the Department by rule; and

"(B) Satisfy the applicable requirements of section 7 and sections 100 through 111 of Title 18 of the District of Columbia Municipal Regulations (18 DCMR §§ 100-111); provided, that the Mayor shall not require an applicant for a limited purpose driver's license or permit under this section to provide a social security number or any document to prove the absence of a social security number.

"(2) An applicant shall include a certified translation of a document provided that is not in English.

"(c) To obtain a limited purpose identification card in accordance with subsection (a) of this section, an applicant shall:

"(1) Meet the requirements of subsection (b)(1)(A) of this section; and

"(2) Meet the applicable requirements of section 112 of Title 18 of the District of Columbia Municipal Regulations (18 DCMR § 112); provided, that the Mayor shall not require an applicant for a limited purpose identification card under this section to provide a social security number or any document to prove the absence of a social security number.

"(d) A limited purpose driver's license or identification card issued under subsection (a) of this section shall be valid for 8 years. A limited purpose learner's or provisional permit shall be valid for the time period as set forth in sections 7(a)(2) and 7(a)(2A).

"(e) An individual who is issued a limited purpose driver's license or permit under this section shall have the equivalent authorization to operate a motor vehicle as provided in section 7 and shall be subject to all statutory and regulatory provisions pertaining to driver licensing and operation of a motor vehicle.

ENROLLED ORIGINAL

"(f)(1) A limited purpose driver's license, permit, or identification card issued under subsection (a) of this section shall state the following on the face of the card and in its machine-readable zone in a font size no larger than the smallest font size otherwise appearing on the card: "Not valid for official federal purposes."

"(2) The Mayor may incorporate different features but only if doing so would result in a card that appears more similar to a license issued under section 7, or if required by the Department of Homeland Security; provided, that the Mayor does so to the minimum extent necessary to comply.

"(g) A limited purpose driver's license, permit, or identification card issued under subsection (a) of this section shall not be used to consider an individual's citizenship or immigration status, or as a basis for a criminal investigation, arrest, or detention.

"(h) The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), may issue rules to implement the provisions of this section. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day period, the proposed rules shall be deemed approved.".

Sec. 3. Applicability.

This act shall apply as of May 1, 2014.

Sec. 4. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

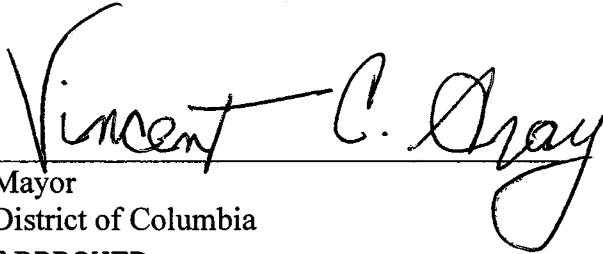
Sec. 5. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December

ENROLLED ORIGINAL

24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia



Mayor
District of Columbia
APPROVED
November 18,2013

COUNCIL OF THE DISTRICT OF COLUMBIA
NOTICE OF INTENT TO ACT ON NEW LEGISLATION

The Council of the District of Columbia hereby gives notice of its intention to consider the following legislative matters for final Council action in not less than **15 days.** Referrals of legislation to various committees of the Council are listed below and are subject to change at the legislative meeting immediately following or coinciding with the date of introduction. It is also noted that legislation may be co-sponsored by other Councilmembers after its introduction.

Interested persons wishing to comment may do so in writing addressed to Nyasha Smith, Secretary to the Council, 1350 Pennsylvania Avenue, NW, Room 5, Washington, D.C. 20004. Copies of bills and proposed resolutions are available in the Legislative Services Division, 1350 Pennsylvania Avenue, NW, Room 10, Washington, D.C. 20004 Telephone: 724-8050 or online at www.dccouncil.us.

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COUNCIL OF THE DISTRICT OF COLUMBIA PROPOSED LEGISLATION

BILLS

B20-578 Tax Auction Bidder Reliability Assurance Amendment Act of 2013

Intro. 11-19-13 by Councilmembers Cheh and Evans and referred to the Committee on Finance and Revenue

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B20-579 Youth Tanning Safety Act of 2013

Intro. 11-19-13 by Councilmembers Cheh and Alexander and referred to the Committee on Health

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B20-580 Service Member, Spouse and Veteran Licensure and Certification Improvement Act of 2013

Intro. 11-19-13 by Councilmembers McDuffie, Catania, Bonds and Chairman Mendelson and referred to the Committee on Business, Consumer, and Regulatory Affairs with comments from the Committee on Health

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B20-581 Character Education Implementation Act of 2013

Intro. 11-19-13 by Councilmembers Evans, Orange, Bonds and Alexander and referred to the Committee on Education

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BILLS CON'T

B20-582 District of Columbia Unemployment Profile Act of 2013

Intro. 11-19-13 by Councilmember Orange and referred to the Committee on Business, Consumer, and Regulatory Affairs

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PROPOSED RESOLUTIONS

PR20-552 Board of Zoning Adjustment Marnique Heath Confirmation Resolution of 2013

Intro. 11-05-13 by Chairman Mendelson at the request of the Mayor and referred to the Committee of the Whole

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PR20-556 Sense of the Council for a Hearing on the New Columbia Admission Act Resolution of 2013

Intro. 11-19-13 by Councilmembers Cheh, Bonds, Grosso, Evans, McDuffie, Alexander, Barry, Catania, Orange, Graham, Bowser, Wells and Chairman Mendelson and is retained by the Council with comments from the Committee of the Whole

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Council of the District of Columbia
Committee on Finance and Revenue
Notice of Public Hearing
John A. Wilson Building, 1350 Pennsylvania Avenue, N.W. Washington, D.C. 20004

REVISED

COUNCILMEMBER JACK EVANS, CHAIR
COMMITTEE ON FINANCE AND REVENUE

ANNOUNCES A PUBLIC HEARING ON:

Bill 20-40, the "Organ Donors Saves Lives Act of 2013"
Bill 20-485, the "Meridian International Center Real Property Tax Abatement Act of 2013"
Bill 20-190, the "Disabled Veterans Homestead Exemption Act of 2013"

Wednesday, December 11, 2013
10:00 a.m.
Room 120 - John A. Wilson Building
1350 Pennsylvania Avenue, NW; Washington, D.C. 20004

Councilmember Jack Evans, Chairman of the Committee on Finance and Revenue, announces a public hearing to be held on Wednesday, December 11, 2013 at 10:00 a.m., in Room 120 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

Bill 20-40, the "Organ Donors Saves Lives Act of 2013" would provide a tax credit for up to $25,000 related to live organ donation expenses incurred during the tax year in which the live organ donation occurs, and to classify leave for organ donation as medical leave under the District of Columbia Family and Medical Leave Act of 1990.

Bill 20-485, the "Meridian International Center Real Property Tax Abatement Act of 2013"would amend Chapter 10 of Title 47 of the District of Columbia Official Code to exempt from taxation certain real property (Lots 806, 808, 809 in Square 2568; and Lots 2369-2401, 2413-2417, 2423, 2441, and 2442 in Square 2567) so long as it is used in carrying on the purposes and activities of Meridian International Center.

B20-190, the "Disabled Veterans Homestead Exemption Act of 2013" would amend section 47-850 of the District of Columbia Official Code to provide that a veteran who is classified as having a total and permanent disability or is paid at the 100% disability rating level as a result of unemployability shall be exempt from a portion of the property taxes assessed on his or her primary residence that qualifies as homestead and is owned by a veteran.

The Committee invites the public to testify at the hearing. Those who wish to testify should contact Sarina Loy, Committee Assistant at (202) 724-8058 or sloy@dccouncil.us, and provide your name, organizational affiliation (if any), and title with the organization by 10:00 a.m. on Tuesday, December 10, 2013. Witnesses should bring 15 copies of their written testimony to the hearing. The Committee allows individuals 3 minutes to provide oral testimony in order to permit each witness an opportunity to be heard. Additional written statements are encouraged and will be made part of the official record. Written statements may be submitted by e-mail to sloy@dccouncil.us or mailed to: Council of the District of Columbia; 1350 Pennsylvania Ave., N.W.; Suite 114; Washington D.C. 20004. This hearing notice has been revised to add Bill 20-190 to the agenda.

Council of the District of Columbia
Committee on Economic Development
Notice of Public Hearing
1350 Pennsylvania Avenue, N.W. Washington, DC 20004

COUNCILMEMBER MURIEL BOWSER, CHAIRPERSON
COMMITTEE ON ECONOMIC DEVELOPMENT

ANNOUNCE A PUBLIC HEARING

On

Bill 20-58, the Tenant Bill of Rights Act of 2013

DECEMBER 10, 2013
2:00 PM
ROOM 120
JOHN A. WILSON BUILDING
1350 PENNSYLVANIA AVENUE, N.W.

On December 10, 2013, Councilmember Muriel Bowser, Chairperson of the Committee on Economic Development, will hold a public hearing to consider Bill 20-58. The Tenant Bill of Rights Act of 2013 would require the Office of the Tenant Advocate to produce a Tenant Bill of Rights, require all leases for residential rental units to be accompanied by the Tenant Bill of Rights, and to establish civil penalties for landlords that fail to provide the Tenant Bill of Rights to tenants at the time that the lease is first presented.

The public hearing will begin at 2:00 PM in Room 120 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W.

Individuals and representatives of community organizations wishing to testify should contact Judah Gluckman, Legislative Counsel to the Committee on Economic Development, at (202) 724-8025, or jgluckman@dccouncil.us and furnish their name, address, telephone number, and organizational affiliation, if any, by the close of business December 9, 2013. Persons presenting testimony may be limited to 3 minutes in order to permit each witness an opportunity to be heard. Please provide the Committee 20 copies of any written testimony.

If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Copies of written statements should be submitted to the Committee on Economic Development, Council of the District of Columbia, Suite 110 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON THE JUDICIARY AND PUBLIC SAFETY
NOTICE OF PUBLIC HEARING
1350 Pennsylvania Avenue, NW, Washington, D.C. 20004

COUNCILMEMBER TOMMY WELLS, CHAIRPERSON
COMMITTEE ON THE JUDICIARY AND PUBLIC SAFETY

ANNOUNCES A PUBLIC HEARING ON

PR 20-0378, THE "DISTRICT OF COLUMBIA CORRECTIONS INFORMATION COUNCIL REVEREND SAMUEL W. WHITAKER CONFIRMATION RESOLUTION OF 2013"

PR 20-0445, THE "CHILD FATALITY REVIEW COMMITTEE JELANI A. FREEMAN CONFIRMATION RESOLUTION OF 2013"

PR 20-499, THE "DISTRICT OF COLUMBIA SENTENCING AND CRIMINAL CODE REVISION COMMISSION MARVIN TURNER CONFIRMATION RESOLUTION OF 2013"

PR 20-486, THE "DOMESTIC VIOLENCE FATALITY REVIEW BOARD JONATHAN Y. O'REILLY CONFIRMATION RESOLUTION OF 2013"

PR 20-487, THE "DOMESTIC VIOLENCE FATALITY REVIEW BOARD ERIN S. LARKIN CONFIRMATION RESOLUTION OF 2013"

PR 20-488, THE "DOMESTIC VIOLENCE FATALITY REVIEW BOARD VARINA JANE WINDER CONFIRMATION RESOLUTION OF 2013"

PR 20-489, THE "DOMESTIC VIOLENCE FATALITY REVIEW BOARD LISA V. MARTIN CONFIRMATION RESOLUTION OF 2013"

PR 20-490, THE "DOMESTIC VIOLENCE FATALITY REVIEW BOARD LAURIE S. KOHN CONFIRMATION RESOLUTION OF 2013"

PR 20-491, THE "DOMESTIC VIOLENCE FATALITY REVIEW BOARD DIANNE M. HAMPTON CONFIRMATION RESOLUTION OF 2013"

AND

PR 20-525, THE "DOMESTIC VIOLENCE FATALITY REVIEW BOARD SHARLENE J. KRANZ CONFIRMATION RESOLUTION OF 2013"

Thursday, January 16, 2014, 11 a.m.
Room 412
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, D.C. 20004

Councilmember Tommy Wells, Chairperson of the Committee on the Judiciary and Public Safety, will convene a public hearing on Thursday, January 16, 2014, beginning at 11 a.m. in Room 412 of the John A. Wilson Building. The purpose of this hearing is to receive public comment on the Mayor's nominations to the District of Columbia Corrections Information Council, Child Fatality Review Committee, District of Columbia Sentencing and Criminal Code Revision Commission, and the Domestic Violence Fatality Review Board.

PR 20-378, the "District of Columbia Corrections Information Council Reverend Samuel W. Whitaker Confirmation Resolution of 2013" would confirm the reappointment of Reverend Whitaker for a two-year term to end June 7, 2015. The resolution may be viewed online at http://dcclims1.dccouncil.us/images/00001/20131113102844.pdf.

PR 20-445, the "Child Fatality Review Committee Jelani A. Freeman Confirmation Resolution of 2013" would confirm the appointment of Mr. Freeman for a term to end three years from the date of appointment. The resolution may be viewed online at http://dcclims1.dccouncil.us/images/00001/20130924113644.pdf.

PR 20-499, the "District of Columbia Sentencing and Criminal Code Revision Commission Marvin Turner Confirmation Resolution of 2013" would confirm the appointment of Mr. Turner for a term to end December 4, 2015. The resolution may be viewed online at http://dcclims1.dccouncil.us/images/00001/20131010132742.pdf.

PR 20-486, the "Domestic Violence Fatality Review Board Jonathan Y. O'Reilly Confirmation Resolution of 2013" would confirm the appointment of Mr. O'Reilly to complete the remainder of an unexpired vacant term to end July 20, 2016. The resolution may be viewed online at http://dcclims1.dccouncil.us/images/00001/20131007134723.pdf.

PR 20-487, the "Domestic Violence Fatality Review Board Erin S. Larkin Confirmation Resolution of 2013" would confirm the appointment of Ms. Larkin to complete the remainder of an unexpired vacant term to end July 20, 2016. The resolution may be viewed online at http://dcclims1.dccouncil.us/images/00001/20131007134928.pdf.

PR 20-488, the "Domestic Violence Fatality Review Board Varina Jane Winder Confirmation Resolution of 2013" would confirm the appointment of Ms. Winder to complete the remainder of an unexpired vacant term to end July 20, 2016. The resolution may be viewed online at http://dcclims1.dccouncil.us/images/00001/20131007135113.pdf.

PR 20-489, the "Domestic Violence Fatality Review Board Lisa V. Martin Confirmation Resolution of 2013" would confirm the appointment of Ms. Martin to complete the remainder of an unexpired vacant term to end July 20, 2016. The resolution may be viewed online at http://dcclims1.dccouncil.us/images/00001/20131007135246.pdf.

PR 20-490, the "Domestic Violence Fatality Review Board Laurie S. Kohn Confirmation Resolution of 2013" would confirm the appointment of Ms. Kohn for a term to end July 20, 2016. The resolution may be viewed online at http://dcclims1.dccouncil.us/images/00001/20131007135640.pdf.

PR 20-491, the "Domestic Violence Fatality Review Board Dianne M. Hampton Confirmation Resolution of 2013" would confirm the appointment of Ms. Hampton for a term to end July 20, 2016. The resolution may be viewed online at http://dcclims1.dccouncil.us/images/00001/20131007135832.pdf

PR 20-525, the "Domestic Violence Fatality Review Board Sharlene J. Kranz Confirmation Resolution of 2013" would confirm the appointment of Ms. Kranz to complete the remainder of an unexpired vacant term to end July 20, 2016. The resolution may be viewed online at http://dcclims1.dccouncil.us/images/00001/20131104170942.pdf.

The Committee invites the public to testify. Those who wish to testify should contact Tawanna Shuford at 724-7808 or tshuford@dccouncil.us, and furnish their name, address, telephone number, and organizational affiliation, if any, by 5 p.m. on Tuesday, January 14, 2014. Testimony may be limited to 3 minutes for individuals and 5 minutes for those representing organizations or groups. Witnesses should bring 15 copies of their testimony. Those unable to testify at the public hearing are encouraged to submit written statements for the official record. Written statements should be submitted by 5 p.m. on Friday, January 31, 2014 to Ms. Shuford, Committee on the Judiciary and Public Safety, Room 109, 1350 Pennsylvania Ave., NW, Washington, D.C., 20004, or via email at tshuford@dccouncil.us.

Council of the District of Columbia
Committee on Health
Notice of Public Oversight Roundtable
1350 Pennsylvania Ave., N.W., Washington, D.C. 20004 **REVISED**

COUNCILMEMBER YVETTE M. ALEXANDER, CHAIRPERSON
COMMITTEE ON HEALTH ANNOUNCES A PUBLIC OVERSIGHT ROUNDTABLE

on

The District of Columbia Health Benefit Exchange Authority

Tuesday, December 10, 2013
11:00 a.m., Room 412, John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Councilmember Yvette M. Alexander, Chairperson of the Committee on Health, announces a public oversight roundtable on the implementation of the District of Columbia Health Benefit Exchange. The roundtable will be held at 11:00 a.m. on Tuesday, December 10, 2013 in Room 412 of the John A. Wilson Building. **Please note that this reflects a new date and location.**

The purpose of this public oversight roundtable is to provide the public with an opportunity to comment on the District's Health Benefit Exchange Authority and its continuing efforts to implement the Affordable Care Act.

Those who wish to testify should contact Melanie Williamson, Legislative Counsel, at (202) 741-2112 or via e-mail at mwilliamson@dccouncil.us and provide their name, address, telephone number, organizational affiliation and title (if any) by close of business on Friday, December 6, 2013. Persons wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. If submitted by the close of business on Friday, December 6, 2013, the testimony will be distributed to Councilmembers before the hearing. Witnesses should limit their testimony to four minutes; less time will be allowed if there are a large number of witnesses.

If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Copies of written statements should be submitted either to Ms. Williamson, or to Ms. Nyasha Smith, Secretary to the Council, Room 5 of the Wilson Building, 1350 Pennsylvania Avenue, N.W. Washington, D.C. 20004. The record will close at 5:00 p.m. on December 24, 2013.

Council of the District of Columbia
Committee on Finance and Revenue
Notice of Public Oversight Roundtable
John A. Wilson Building, 1350 Pennsylvania Avenue, N.W. Washington, D.C. 20004

COUNCILMEMBER JACK EVANS, CHAIR
COMMITTEE ON FINANCE AND REVENUE

ANNOUNCES A PUBLIC OVERSIGHT ROUNDTABLE ON:

The Mundo Verde Bilingual Public Charter School Revenue Bonds Project

November 25, 2013
10:00 a.m.
Room 120 - John A. Wilson Building
1350 Pennsylvania Avenue, NW, Washington, D.C. 20004

Councilmember Jack Evans, Chairman of the Committee on Finance and Revenue, announces a public oversight roundtable to be held on Monday, November 25, 2013 at 10:00 a.m. in Room 120 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

The Mundo Verde Bilingual Public Charter School Revenue Bonds Project will authorize and provide for the issuance, sale and delivery in an aggregate principal amount not to exceed $15 million of the District of Columbia revenue bonds in one or more series and to authorize and provide for the loan of the proceeds of the bonds to assist Mundo Verde Bilingual Public Charter School in the financing, refinancing or reimbursing of cost associated with an authorized project pursuant to section 490 of the District of Columbia Home Rule Act. The project is located at 44 P Street, N.W., and includes the renovation of the existing facility and the construction of a new addition to the facility.

The Committee invites the public to testify at the roundtable. Those who wish to testify should contact Sarina Loy, Committee Aide at (202) 724-8058 or sloy@dccouncil.us, and provide your name, organizational affiliation (if any), and title with the organization by 10:00 a.m. on Friday, November 22, 2013. Witnesses should bring 15 copies of their written testimony to the hearing. The Committee allows individuals 3 minutes to provide oral testimony in order to permit each witness an opportunity to be heard. Additional written statements are encouraged and will be made part of the official record. Written statements may be submitted by e-mail to sloy@dccouncil.us or mailed to: Council of the District of Columbia, 1350 Pennsylvania Ave., N.W., Suite 114, Washington D.C. 20004.

Council of the District of Columbia
Committee on Economic Development
Notice of Public Roundtable
1350 Pennsylvania Avenue, N.W. Washington, DC 20004

COUNCILMEMBER MURIEL BOWSER, CHAIRPERSON
COMMITTEE ON ECONOMIC DEVELOPMENT

ANNOUNCES A PUBLIC ROUNDTABLE

ON

Proposed Resolution 20-438, Rental Housing Commission Claudia McKoin Confirmation Resolution of 2013

DECEMBER 10, 2013
11:00 AM
ROOM 120
JOHN A. WILSON BUILDING
1350 PENNSYLVANIA AVENUE, N.W.

On December 10, 2013, Councilmember Muriel Bowser, Chairperson of the Committee on Economic Development will hold a public roundtable to consider the Mayor's nomination of Claudia McKoin to serve as a member of the Rental Housing Commission. The Commission is a three member, independent and quasi-judicial body created by D.C. Code § 42-4012. It is charged with enforcing the Rental Housing Act of 1985 through the issuance of regulations, establishing annual rent adjustments as allowed by the District's rent control laws, and deciding appeals on landlord/tenant issues brought from the Rent Administrator and the Office of Administrative Hearings.

The public roundtable will begin at 11:00 AM in Room 120 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W.

Individuals and representatives of organizations wishing to testify should contact Judah Gluckman, Legislative Counsel for the Committee on Economic Development, at (202) 724-8025, or jgluckman@dccouncil.us and furnish their name, address, telephone number, and organizational affiliation, if any, by the close of business Monday, December 9, 2013. Persons presenting testimony may be limited to 3 minutes in order to permit each witness an opportunity to be heard.

If you are unable to testify at the roundtable, written statements are encouraged and will be made a part of the official record. Copies of written statements should be submitted to the Committee on Economic Development, Council of the District of Columbia, Suite 112 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

COUNCIL OF THE DISTRICT OF COLUMBIA
Notice of Reprogramming Requests

Pursuant to DC Official Code Sec 47-361 et seq. of the Reprogramming Policy Act of 1990, the Council of the District of Columbia gives notice that the Mayor has transmitted the following reprogramming request(s).

A reprogramming will become effective on the 15th day after official receipt unless a Member of the Council files a notice of disapproval of the request which extends the Council's review period to 30 days. If such notice is given, a reprogramming will become effective on the 31st day after its official receipt unless a resolution of approval or disapproval is adopted by the Council prior to that time.

Comments should be addressed to the Secretary to the Council, John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Room 5 Washington, D.C. 20004. Copies of reprogramming requests are available in Legislative Services, Room 10.
Telephone: 724-8050

Reprog. 20-127: Request to reprogram $900,000 of Federal Capital Fund budget authority and allotment within the District Department of Transportation (DDOT) was filed in the Office of the Secretary on November 12, 2013. This reprogramming is needed to align the Federal Funds for subproject CB035A, Highway Safety Improvement Program, with the Federal Highway Administration's (FHWA) obligation for the project.

RECEIVED: 14 day review begins November 13, 2013

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: November 22, 2013
Petition Date: January 06, 2014
Hearing Date: January 21, 2014
Protest Date: March 19, 2014

License No.: ABRA-093635
Licensee: Bodogs, LLC
Trade Name: Bodogs
License Class: Retailer's Class "D" Restaurant
Address: 614 E St., NW
Contact: Joseph Jemal (399) 917-3525

WARD 2 ANC 2B SMD 2B05

Notice is hereby given that this applicant has applied for a license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the hearing date at 10:00 am, 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petition and/or request to appear before the Board must be filed on or before the petition date. The Protest Hearing Date is scheduled for 1:30 pm on March 19, 2014.

NATURE OF OPERATION
Restaurant serving hot dogs with a seating capacity of 15 and total occupancy load of 30. Sidewalk café with 15 seats.

HOURS OF OPERATION
Sunday through Saturday 9 am – 11 pm

HOURS OF ALCOHOLIC BEVERAGES SALES/SERVICE/CONSUMPTION
Sunday through Saturday 10 am – 11 pm

HOURS OF OPERATION AND ALCOHOLIC BEVERAGES SALES/SERVICE/CONSUMPTION ON SIDEWALK CAFE
Sunday through Saturday 10 am – 11 pm

****Rescind**

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: November 8, 2013
Petition Date: December 23, 2013
Hearing Date: January 6, 2014
Protest Date: March 5, 2014

License No.: ABRA-093454
Licensee: Experience Umbria Wines, LLC
Trade Name: Experience Umbria Wines
License Class: Retailer's Class "A" Online
Address: 1629 K St. NW
Contact: Michael Fonseca 202-625-7700

WARD 2 ANC 2B SMD 2B05

Notice is hereby given that this applicant has applied for a license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the hearing date at 10:00 am, 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petition and/or request to appear before the Board must be filed on or before the petition date. The Protest Hearing Date is scheduled for 1:30 pm on March 5, 2014.

NATURE OF OPERATION
Online retailer liquor store. Sales will be made through Internet credit cards transactions. Confirmation of identification of the purchaser will be made at the time of delivery. Off-site storage of its alcoholic beverages will be at Security Moving & Storage, 1701 Florida Ave., NW. This location is for storage and delivery only; no public access.

HOURS OF OPERATION AT STORAGE FACILITY
Sunday through Saturday 9 am – 9 pm

HOURS OF SALES AND SERVICE OF ALCOHOLIC BEVERAGE
Sunday through Saturday 9 am – 9 pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: November 22, 2013
Petition Date: January 6, 2014
Roll Call Hearing Date: January 21, 2014
Protest Date: March 19, 2014

License No.: ABRA-093092
Licensee: Z CAPITAL GRILL, INC.
Trade Name: FELICITA PIZZERIA
License Class: Retailer's Class "C" Restaurant
Address: 4720 14th Street, NW.
Contact: Z. I. RUSSELL: **(202) 577-1400**

WARD 4 ANC 4C SMD 4C02

Notice is hereby given that this applicant has applied for a license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such license on the roll call hearing date at 10:00 am 2000 14th Street, N.W., 400 South, Washington, DC 20009. Petitions and/or requests to appear before the Board must be filed on or before the petition date. The Protest Hearing Date is scheduled for 1:30pm on March 19, 2014.

NATURE OF OPERATION
It will be a franchised restaurant that sells pizza and pasta with Italian Style.
Total Occupancy Load 52, Seating 32.

HOURS OF OPERATION
Sunday through Saturday: 10am-2am

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION
Sunday through Saturday: 10am-2am

***Re-Advertisement**

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: November 22, 2013
Petition Date: January 6, 2014
Hearing Date: January 21, 2014

License No.: ABRA-085617
Licensee: AED, LLC
Trade Name: Rustic Tavern
License Class: Retailer's Class "C" Tavern
Address: 84 T Street, NW
Phone: Ejonta Pashaj 202-290-2936 info@rusticdc.com

WARD 5 ANC 5E SMD 5E07

Notice is hereby given that this licensee who has applied for a substantial change to his license under the D.C. Alcoholic Beverage Control Act and that objectors are entitled to be heard before the granting of such on the hearing date at 10:00 am, 4th Floor, 2000 14th Street, NW, Washington, DC, 20009. A petition or request to appear before the Board must be filed on or before the petition date.

LICENSEE REQUESTS THE FOLLOWING SUBSTANTIAL CHANGE TO THE NATURE OF OPERATIONS:
Change of Hours

CURRENT HOURS OF OPERATION AND HOURS OF ALCOHOLIC BEVERAGE SALES/CONSUMPTION
Sunday through Thursday 11 am - 12 am, Friday and Saturday11 am – 1am

CURRENT HOURS OF LIVE ENTERTAINMENT
Monday through Thursday 8 pm – 10 pm; Saturday and Sunday 6 pm – 10 pm,

CURRENT HOURS OF LIVE SIDEWALK CAFÉ
Sunday through Thursday 11 am – 10 pm, Friday and Saturday 11 am – 11 pm

PROPOSED HOURS OF OPERATIONS/ PROPOSED HOURS OF OPERATION AND HOURS OF ALCOHOLIC BEVERAGE SALES/CONSUMPTION
Sunday through Thursday 10 am – 1 am, Thursday and Friday 10 am – 1 am

***Rescind**

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: November 15, 2013
Petition Date: December 30, 2013
Hearing Date: January 13, 2014

License No.: ABRA-085617
Licensee: AED, LLC
Trade Name: Rustic Tavern
License Class: Retailer's Class "C" Tavern
Address: 84 T Street, NW
Phone: Ejonta Pashaj 202-290-2936 info@rusticdc.com

WARD 5 ANC 5E SMD 5E07

Notice is hereby given that this licensee who has applied for a substantial change to his license under the D.C. Alcoholic Beverage Control Act and that objectors are entitled to be heard before the granting of such on the hearing date at 10:00 am, 4th Floor, 2000 14th Street, NW, Washington, DC, 20009. A petition or request to appear before the Board must be filed on or before the petition date.

LICENSEE REQUESTS THE FOLLOWING SUBSTANTIAL CHANGE TO THE NATURE OF OPERATIONS:
Change of Hours

CURRENT HOURS OF OPERATION AND HOURS OF ALCOHOLIC BEVERAGE SALES/CONSUMPTION
Sunday through Thursday 11 am - 12 am, Friday and Saturday11 am – 1am

CURRENT HOURS OF LIVE ENTERTAINMENT
Saturday and Sunday 6 pm – 10 pm, Monday through Thursday 8 pm – 10 pm

CURRENT HOURS OF LIVE SIDEWALK CAFÉ
Sunday through Thursday 11 am – 10 pm, Friday and Saturday 11 am – 11 pm

PROPOSED HOURS OF OPERATIONS/ PROPOSED HOURS OF OPERATION AND HOURS OF ALCOHOLIC BEVERAGE SALES/CONSUMPTION
Sunday through Thursday 10 am – 1 am, Thursday and Friday 10 am – 2 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: November 22, 2013
Petition Date: January 06, 2014
Hearing Date: January 21, 2014
Protest Date: March 19, 2014

License No.: ABRA-093632
Licensee: H Street Corridor Group, LLC
Trade Name: Sin Bin Sports Bar & Restaurant
License Class: Retailer's Class "C" Restaurant
Address: 1336 H Street, NE
Contact: David McQuaid, 202-360-6209

WARD 6 ANC 6A SMD 6A06

Notice is hereby given that this applicant has applied for a license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the hearing date at 10:00 am, 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petition and/or request to appear before the Board must be filed on or before the petition date. The Protest Hearing Date is scheduled for 1:30 pm on March 19, 2014.

NATURE OF OPERATION
Restaurant serving an array of appetizers entrees, burgers and sandwiches with seats for 200 patrons. Total occupancy load of 400. Entertainment endorsement to include dancing and cover charge and summer garden with 50 seats.

HOURS OF OPERATION AND ALCOHOLIC BEVERAGES SALES/SERVICE/CONSUMPTION FOR INSIDE PREMISE AND OUTSIDE SUMMER GARDEN
Sunday through Thursday 8 am – 2 am and Friday & Saturday 8 am – 3 am

HOURS OF ENTERTAINMENT
Sunday through Thursday 8 pm – 2 am and Friday & Saturday 8 pm – 3 am

HISTORIC PRESERVATION REVIEW BOARD

NOTICE OF PUBLIC HEARING

The D.C. Historic Preservation Review Board has received from the Reed-Cooke Neighborhood Association and Historic Mount Pleasant to designate the following properties as a historic district in the D.C. Inventory of Historic Sites. The application has been co-sponsored by the D.C. Historic Preservation Office. The Board will hold a public hearing to consider the application and will also consider the nomination of the properties to the National Register of Historic Places as a historic district:

Case No. 14-01: Meridian Hill Historic District

Including the following addresses:
2201, 2203, 2301, 2307, 2311, 2313, 2315, 2317, 2319, 2325, 2327, 2331, 2401, 2407, 2437, 2445, 2535, 2633, 2634, 2650 and 2656 15th Street NW;
2101, 2400, 2420, 2434, 2440, 2460, 2480, 2600, 2601, 2620, 2622, 2630, 2631, 2633, 2635, 2637, 2639, 2640, 2651, 2700, 2800, 2801, 2810, 2827, 2829, 2835, 2901, 3029, 3033, 3039, 3055 and 3060 16th Street NW and west side of the 2100-2200 block (stone retaining wall);
1476 Belmont Street NW;
1501, 1610, 1629 and 1630 Columbia Road NW;
1624, 1630, 1661 and 1685 Crescent Place NW;
1475 and 1630 Euclid Street NW;
1601 and 1620 Fuller Street NW;
1500 and 1613 Harvard Street NW;
3010, 3055, 3059 and 3069 Mount Pleasant Street NW;
2517 Mozart Place NW;
2100 and 2112 New Hampshire Avenue NW;
1511 V Street NW; and
Federal Reservations 309B, 309C (Rabaut Park), 309D, 327 (Meridian Hill Park) and 565

Also currently known as:
Reservations 309B and 309C (Rabaut Park) and 309 D and 327 (Meridian Hill Park) and 565; and Square 188, Lots 72, 73 and 802; Square 2567, part of Lot 79 (stone retaining wall); Square 2568, Lots 806, 808 and 809; Square 2570, Lot 809; Square 2571, Lots 11, 50, 101, 104, 816, 954, 960 and 2001-2142; Square 2572, Lot 815; Square 2574, Lots 29, 32-34, 808, 829, 831, 832 and 2001-2025; Square 2575, Lots 23, 30-32, 818, 834, 843, 844; Square 2577, Lots 38, 39, 43, 821 and 2001-2023; Square 2578, Lots 25, 26, 830; Square 2589, Lot 476; Square 2591, Lots 1058, 2010-2086, 2088-2095 and 2097-2099; Square 2594, Lots 175, 803, and 2001, 2003, 2005-2007, 2009, 2014, 2015, 2017, 2019, 2020, 2022-2025, 2027-2029, 2031, 2032, 2034, 2036-2038, 2040-2042, 2044-2047, 2049, 2050, 2053-2055, 2057, 2058, 2060, 2062, 2065-2067, 2069-2072, 2074, 2077, 2078, 2080, 2081, 2083-2092; Square 2660, Lots 8, 219-222, 233, 883, 2015-2023, and 2110-2128; Square 2661, Lots 217, 218 and 862; Square 2662, Lots 210, 871 and 872; Square 2663, Lots 843 and 845; Square 2666, Lots 202 and 832; Square 2671, Lots 804, 817, 819, 1055, 1056 and 2001-2014

The hearing will take place at **9:00 a.m. on Thursday, January 23, 2014**, at 441 Fourth Street, NW (One Judiciary Square), in Room 220 South. It will be conducted in accordance with the Review Board's Rules of Procedure (10C DCMR 2). A copy of the rules can be obtained from the Historic Preservation Office at 1100 4th Street, SW, Suite E650, Washington, DC 20024, or by phone at (202) 442-8800, and they are included in the preservation regulations which can be found on the Historic Preservation Office website.

The Board's hearing is open to all interested parties or persons. Public and governmental agencies, Advisory Neighborhood Commissions, property owners, and interested organizations or individuals are invited to testify before the Board. Written testimony may also be submitted prior to the hearing. All submissions should be sent to the address above.

A copy of the historic district application is currently on file and available for inspection by the public at the Historic Preservation Office. The nomination and proposed design guidelines for the district are posted on the Historic Preservation Office website at **http://tinyurl.com/9jvoeaa**. It can also be emailed or mailed to interested parties. A copy of the staff report and recommendation will be available at the office five days prior to the hearing. The office also provides information on the D.C. Inventory of Historic Sites, the National Register of Historic Places, and Federal tax provisions affecting historic property.

If the Historic Preservation Review Board designates the proposed district, it will be included in the D.C. Inventory of Historic Sites, and will be protected by the D.C. Historic Landmark and Historic District Protection Act of 1978. The Review Board will simultaneously consider its nomination to the National Register of Historic Places. The National Register is the Federal government's official list of prehistoric and historic properties worthy of preservation. Listing in the National Register provides recognition and assists in preserving our nation's heritage. Listing provides recognition of the historic importance of properties and assures review of Federal undertakings that might affect the character of such properties. If a property is listed in the Register, certain Federal rehabilitation tax credits for rehabilitation and other provisions may apply. Public visitation rights are not required of owners. The results of listing in the National Register are as follows:

Consideration in Planning for Federal, Federally Licensed, and Federally Assisted Projects: Section 106 of the National Historic Preservation Act of 1966 requires that Federal agencies allow the Advisory Council on Historic Preservation an opportunity to comment on all projects affecting historic properties listed in the National Register. For further information, please refer to 36 CFR 800.

Eligibility for Federal Tax Provisions: If a property is listed in the National Register, certain Federal tax provisions may apply. The Tax Reform Act of 1986 (which revised the historic preservation tax incentives authorized by Congress in the Tax Reform Act of 1976, the Revenue Act of 1978, the Tax Treatment Extension Act of 1980, the Economic Recovery Tax Act of 1981, and the Tax Reform Act of 1984) provides, as of January 1, 1987, for a 20% investment tax credit with a full adjustment to basis for rehabilitating historic commercial,

industrial, and rental residential buildings. The former 15% and 20% Investment Tax Credits (ITCs) for rehabilitation of older commercial buildings are combined into a single 10% ITC for commercial and industrial buildings built before 1936. The Tax Treatment Extension Act of 1980 provides Federal tax deductions for charitable contributions for conservation purposes of partial interests in historically important land areas or structures. Whether these provisions are advantageous to a property owner is dependent upon the particular circumstances of the property and the owner. Because the tax aspects outlined above are complex, individuals should consult legal counsel or the appropriate local Internal Revenue Service office for assistance in determining the tax consequences of the above provisions. For further information on certification requirements, please refer to 36 CFR 67.

Qualification for Federal Grants for Historic Preservation When Funds Are Available: The National Historic Preservation Act of 1966, as amended, authorizes the Secretary of the Interior to grant matching funds to the States (and the District or Columbia) for, among other things, the preservation and protection of properties listed in the National Register.

Owners of private properties nominated to the National Register have an opportunity to concur with or object to listing in accord with the National Historic Preservation Act and 36 CFR 60. Any owner or partial owner of private property who chooses to object to listing must submit to the State Historic Preservation Officer a notarized statement certifying that the party is the sole or partial owner of the private property, and objects to the listing. Each owner or partial owner of private property has one vote regardless of the portion of the property that the party owns. If a majority of private property owners object, a property will not be listed. However, the State Historic Preservation Officer shall submit the nomination to the Keeper of the National Register of Historic Places for a determination of eligibility for listing in the National Register. If the property is then determined eligible for listing, although not formally listed, Federal agencies will be required to allow the Advisory Council on Historic Preservation an opportunity to comment before the agency may fund, license, or assist a project which will affect the property. If an owner chooses to object to the listing of the property, the notarized objection must be submitted to the above address by the date of the Review Board meeting.

For further information, contact Tim Dennee, Landmarks Coordinator, at 202-442-8847.

MAYOR'S AGENT
FOR THE HISTORIC LANDMARK AND HISTORIC DISTRICT PROTECTION ACT

NOTICE OF PUBLIC HEARINGS

Public notice is hereby given that the Mayor's Agent will hold a public hearing on an application affecting property subject to the Historic Landmark and Historic District Protection Act of 1978. Interested parties may appear and testify on behalf of, or in opposition to, the application. The hearings will be held at the Office of Planning, 1100 4th Street SW, Suite E650.

1) Hearing Date: **Thursday, January 9, 2014 at 1:30 p.m.**
Case Number: H.P.A. 13-600
Address: 2422 Tracy Place NW
Square/Lot: 2505:47
Applicant: Lisa Foster and Alan Bersin
Type of Work: Alteration – after-the-fact application for roof replacement

Affected Historic Property: Sheridan-Kalorama Historic District
Affected ANC: 2D

The Applicant's claim is that the alteration is consistent with the purposes of the Act.

The hearing will be conducted in accordance with the Rules of Procedure pursuant to the Historic Landmark and Historic District Protection Act (Title 10C DCMR Chapters 4 and 30), which are on file with the D.C. Historic Preservation Office and posted on the Office website under "Regulations."

Interested persons or parties are invited to participate in and offer testimony at this hearing. Any person wishing to testify in support of or opposition to the application may appear at the hearing and give evidence without filing in advance. However, any affected person who wishes to be recognized as a party to the case is required to file a request with the Mayor's Agent at least ten working days prior to the hearing. This request shall include the following information: 1) his or her name and address; 2) whether he or she will appear as a proponent or opponent of the application; 3) if he or she will appear through legal counsel, and if so, the name and address of legal counsel; and 4) a written statement setting forth the manner in which he or she may be affected or aggrieved by action upon the application and the grounds upon which he or she supports or opposes the application. Any requests for party status should be sent to the Mayor's Agent at 1100 4th Street SW, Suite E650, Washington, D.C. 20024. For further information, contact the Historic Preservation Office, at (202) 442-8800.

DISTRICT OF COLUMBIA PUBLIC SCHOOLS (DCPS)

NOTICE OF PUBLIC HEARING

FY2015 Budget

Tuesday, November 26, 2013; 6:00PM – 8:30PM
Langley Elementary School
101 T Street, NE
Washington, DC 20002

The District of Columbia Public Schools (DCPS) will convene a public hearing on Wednesday, Tuesday, November 26 from 6:00PM – 8:30PM in the auditorium of Langley Education Campus, located at 101 T Street, NE, Washington, DC 20002. The purpose of the hearing is to gather feedback from the public about the upcoming Fiscal Year 2015 budget for DCPS.

Members of the public are invited to provide testimony at the hearing. Individuals or groups who wish to testify should contact Meghan Carton by email at meghan.carton@dc.gov by 5:00 PM on Monday, November 25, 2013. Testimony will be limited to five minutes during the hearing.

Witnesses should bring five (5) copies of their testimony and any supplemental information to the hearing. All documents will be included as part of the official record which will be transmitted to the Mayor of the District of Columbia and to the Council of the District of Columbia, pursuant to DC Official Code § 38-917(1).

Interpretation services are available upon request. Please indicate any requests for interpretation services or other accommodations during the registration process.

Any questions or concerns about the hearing should be directed to Christopher Rinkus at (202) 442-5679 or via email at christopher.rinkus@dc.gov

OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

NOTICE OF FINAL RULEMAKING

The State Superintendent of Education, pursuant to Section 3(b)(11) of the District of Columbia State Education Office Establishment Act of 2000, effective October 21, 2000 (D.C. Law 13-176; D.C. Official Code §§ 38-2602(b)(11) (2012 Repl. & 2013 Supp.)) and Section 401 of the Healthy Schools Act of 2010, effective July 27, 2010 (D.C. Law 18-209; D.C. Official Code §§ 38-824.01 (2012 Repl.)), hereby gives notice of the adoption of a final rule amending in its entirety the "Interscholastic Athletics" at Chapter 27 (Interscholastic Athletics) within Subtitle A (Office of the State Superintendent of Education) of Title 5 (Education) of the District of Columbia Municipal Regulations (DCMR).

This rulemaking maintains uniformity among public schools to enhance eligibility, student safety, training standards, recruiting, and scholarship opportunities, for the immediate benefit of District's high school student athletes attending D.C. Public Schools ("DCPS") and public charter schools. The primary purpose of the revisions is to refine provisions affecting the safety and wellbeing of student athletes during the 2013-2014 school sports season.

The rules maintain the framework of rules published on September 14, 2012 at 59 DCR 10858, and incorporate recommendations received from D.C. Public Schools ("DCPS") and public charter schools during the thirty (30) public comment period to an initial rulemaking proposing amendments to Title 5-A Chapter 27 (DCMR), published April 5, 2013 at 60 DCR 5147.

An Emergency and 2nd Proposed Rulemaking was published in the *D.C. Register* on August 9, 2013, at 60 DCR 11668. One comment was received regarding a technical correction required to correct an inadvertent omission at Paragraph 2700.6 of the words "but not limited to". That clause, present in the last Final Rulemaking published on September 14, 2012 (59 DCR 10858), was omitted in prior proposed rulemakings in 2013. No other public comments were received; no legal challenges were submitted. No requests for changes other than the technical correction were made and no other changes were made.

These rules were approved by the State Superintendent of Education on an emergency basis on July 31, 2013, and were effective for a period of one hundred twenty (120) days as of that date.

The rules are effective on a permanent basis on the date of publication of this notice in the *D.C. Register*.

Chapter 27 (Interscholastic Athletics) of Subtitle A (Office of the State Superintendent of Education) of Title 5 (Education) of the District of Columbia Municipal Regulations (DCMR) is amended in its entirety to read as follows:

CHAPTER 27 INTERSCHOLASTIC ATHLETICS

2700 GENERAL POLICY

2700.1 Student participation in interscholastic athletic programs in the District of Columbia public schools in grades four (4) through twelve (12) shall be governed by the rules and procedures set forth in this chapter.

2700.2 Interscholastic athletic programs shall place an emphasis on academic achievement, principles and practices of good sportsmanship, ethical conduct, and fair play, as well as safety, skills, and the rules of a particular sport.

2700.3 Consistent with this chapter, each Local Educational Agency ("LEA") shall promulgate and implement interscholastic athletic standards including, without limitation, safety and first aid, eligibility, satisfactory progress toward graduation, practice, equipment, training, probationary actions, and grievance procedures for participants.

2700.4 Each LEA shall ensure that students with disabilities consistently have appropriate opportunities to participate in extracurricular athletic activities.

2700.5 All coaches, officials and other personnel, including volunteers engaged with students participating in interscholastic LEA programs, shall obtain a required background check, and demonstrate expertise with regard to a respective sport, applicable rules, safety and first aid standards.

2700.6 A student shall not be excluded from participation in, be denied the benefits of, be treated differently from other students, or otherwise be unlawfully discriminated against in interscholastic athletics based on, but not limited to, race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, status as a victim of an intra-family offense, or place of residence or business.

2700.7 Notwithstanding § 2700.6, a public school may operate a separate sports team for members of each sex, provided that the selection for such team is based upon competitive skill or the activity involved is a contact sport.

2700.8 Notwithstanding § 2700.6, a public school may operate a sports team for members of a single sex, so long as the public school operates a sports team for an underrepresented sex when there is sufficient interest to maintain a team. In the event there is insufficient interest, the LEA shall allow members of the underrepresented sex to try out for existing teams and qualify based on appropriate skill level, safety, and other standards for participation on such team.

2700.9 Except as provided in § 2700.12, a high school varsity team shall be limited to eligible students enrolled in that high school in grades nine (9), ten (10), eleven (11), and twelve (12).

2700.10 Except as provided in § 2700.12, a junior varsity team in high school shall be limited to eligible students enrolled in that high school in grades nine (9), ten (10), and eleven (11).

2700.11 A student who has participated in varsity competition in a sport during a school year shall be ineligible to participate in junior varsity competition in the same sport in the same year.

2700.12 (a) A DCPS student in grade nine (9), ten (10), eleven (11), or twelve (12) attending a DCPS school in which a desired sport is not offered, may request authorization at any DCPS school offering the desired sport.

(b) A public charter school student in grade nine (9), ten (10), eleven (11), or twelve (12) attending a public charter school in which a desired sport is not offered, may request authorization at another school located within the student's attendance zone (based upon the student's primary residential address), or at another public charter school.

(c) Students under this section seeking to participate at another school may only participate if it is allowed in the written policy of the LEA in which the student seeks to participate, and the student meets the eligibility requirements of the State, LEA, and school. An LEA may require actual costs associated with a student's participation and the sending school is required to provide funding for the costs.

2700.13 LEAs and member schools shall annually publish their schedules for interscholastic competition.

2700.14 The State Superintendent may establish an advisory committee on interscholastic athletics to advise LEAs or the Office of the State Superintendent of Education ("OSSE") on matters pertaining to interscholastic athletic programs.

2700.15 LEAs that receive federal funding and maintain athletic programs in the District shall designate at least one (1) employee for purposes of athletics to coordinate with the LEAs' Title IX (as codified at 20 U.S.C. §§ 1681 – 1688) coordinator, to ensure that the requirements of Title IX are met regarding athletics.

2701 ELIGIBILITY TO PARTICIPATE

2701.1 The eligibility certification for students to participate in interscholastic athletics shall occur as follows:

(a) Principals shall be responsible for determining the eligibility of the students participating in interscholastic athletics by submitting a master eligibility list to the LEA's athletic director ("AD") fourteen (14) days before the date of the first (1st) official contest for each team.

(b) A supplemental eligibility list may be submitted up to fourteen (14) days after the first (1st) official contest. However, students on the supplemental eligibility list may not participate without the prior written approval of both the Principal and the LEA's AD.

(c) Each LEA shall report the eligibility and participation of each student determined eligible to play by his or her Principal not later than seven (7) calendar days after receipt of the master eligibility list from the Principal, to the Statewide Athletics Office ("SAO"). Any supplemental list shall also be provided to the SAO immediately after it has been approved by the Principal and LEA.

(d) Each LEA shall provide a written summary with supporting documentation to the SAO with regard to any determinations related to a student's ineligibility within five (5) school days of the determination of ineligibility.

(e) An LEA shall maintain a record of a student's eligibility for each school year of a student's participation on a junior varsity or varsity team. All documentation required in this chapter shall be on file prior to the first (1st) official contest of each sport and maintained during the sport season.

(f) The SAO, upon a thirty day (30) request to the LEA, shall be given access to review and sample athletic eligibility files. The SAO shall notify the LEA in writing regarding any recommendations to maintain sufficient eligibility documentation.

2701.2 LEA and school representatives shall not engage in any activity seeking to influence a student to transfer from one (1) LEA or school to another for the purpose of participating in interscholastic athletics.

2701.3 A student who transfers enrollment from any school to a public school in the District of Columbia in grades nine (9), ten (10), eleven (11), or twelve (12) is ineligible to participate in interscholastic athletics unless he or she meets one (1) of the following exceptions:

(a) A student in grade nine (9) may transfer one (1) time during that school year without loss of eligibility;

(b) A student attending a public school moves to a new bona fide permanent residence in the District of Columbia, with his or her custodial parent(s), legal guardian, or primary caregiver;

(c) The student is transferred to another school by any court order;

(d) A reorganization, consolidation, or annexation of the student's school occurs;

(e) The closure of the student's school or school's athletic program;

(f) The student is ordered to transfer for non-athletic purposes;

(g) The student has special needs, as identified by the Individualized Education Program (IEP) or Section 504 Plan, and is transferred to another public school for the delivery of a free appropriate public education;

(h) A transfer is the result of the student's being homeless as defined in the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11434a(2), except if the student's homeless status is shown to have been created by the student or his/her family for the primary reason of eligibility in interscholastic athletics;

(i) The student transfers as provided for in 5 DCMR E § 3805 because his or her school has been designated as a persistently dangerous school;

(j) The student transfers as provided for in 5 DCMR E § 3809 because he or she has been the victim of a violent crime or a pattern of bulling or other aggressive conduct or sexual harassment;

(k) The student is a qualified foreign exchange student under § 2701.4(e) or an international student residing in the District with his or her parents.

(l) The period of ineligibility for students that transfer absent an exception shall be one (1) calendar year commencing with the first (1st) day of official attendance in the receiving school.

2701.4 The LEA shall develop written procedures for challenges to eligibility based upon credible information that a student may not meet eligibility requirements set forth in this chapter. Challenges to a student-athlete's eligibility shall occur as follows:

(a) A challenge must be presented in writing and signed by the submitting party, addressed to the appropriate school authority where the student is enrolled.

(b) The LEA shall provide a written report with supporting documentation of its findings and the student's right to appeal to the LEA, to the challenging party, SAO, and parents or guardian, not later than five (5) school days after the date the matter is reported to or by the LEA.

(c) Upon a final eligibility determination by the LEA, the LEA shall issue the results of its review and supporting documentation to the SAO and the parents or legal guardian. For the protection of his or her team's win/loss record, the student whose eligibility is in question may not practice, scrimmage, or play in any school sponsored interscholastic athletic competition, until the LEA has issued its eligibility determination pursuant to its review.

(d) In the event an LEA requires forfeiture of a contest already played, the Athletic Appeals Panel ("Panel") shall review the decision affirming or denying the forfeiture and shall provide the results of its findings and recommendations to the LEA not later than five (5) school days after the date the matter is reported to the SAO.

(e) If the LEA fails to provide the results and supporting documentation required in this subsection before the student participates, the SAO may on its own initiative refer the case to the Panel for a final decision regarding eligibility and the forfeiture of contest.

2701.5 In order to be eligible to participate in interscholastic athletics at a public school, a student shall also meet the following requirements:

(a) A student shall be a resident of the District of Columbia in conformance with all residency laws and regulations for students attending public schools in the District of Columbia.

(b) A nonresident student of the District of Columbia is eligible to participate in interscholastic athletics under the following circumstances:

(1) Admission to a public school complies with applicable laws and Regulations;

(2) Applicable nonresident tuition payments are current; and

(3) Enrollment in a public school in the District of Columbia for one (1) calendar year, consistent with § 2701.3.

(c) A student shall provide written authorization for each team that he or she wishes to participate on, and the authorization shall contain the signature of the custodial parent, legal guardian, or primary caregiver.;

(d) A student shall provide a medical certification confirming that the student is physically fit for the sport in which the student seeks to participate;

(e) (1) A student shall be covered by appropriate accident insurance, obtained either by his or her LEA or his or her parent or guardian and approved by his or her school's LEA, during each season the student participates;

(2) Appropriate notice of the coverage and cost of the accident insurance obtained by his or her school's LEA shall be provided annually to parents or guardians and adult students;

(3) A parent or guardian submitting a policy for approval by the student's school's LEA shall do so within the time specified by the LEA; and

(4) Students participating in football shall be insured by additional football accident insurance which shall be paid for by the LEA in which the student is enrolled;

(f) A student athlete shall maintain compliance with State attendance regulations and shall be present at least two-thirds (2/3) of the required school days preceding the first day of each season designated by the SAO for each sport that the student participates in. The student athlete shall have no more than three (3) unexcused absences during the season of participation for each sport;

(g) A student in grade nine (9), ten (10), eleven (11), or twelve (12), shall have a grade point average of at least 2.0 ("C") to participate in interscholastic athletics;

(h) A student in grade four (4), five (5), six (6), seven (7), or eight (8) shall not fail more than one (1) subject in the grading period immediately preceding the sport season in which the student wishes to participate;

(i) The student shall not have graduated from high school from the LEA for which he or she participates in a sport; provided, that an eligible student whose graduation exercises are held before the end of the school year may continue to participate in interscholastic athletics until the end of that school year;

(j) A student-athlete who reaches the following ages on or before August 1 of the school year in which he/she wishes to compete is not eligible:

(1) (12) years old in grades four (4) and five (5);

(2) (15) years old in grades six (6) through eight (8); or

(3) (19) years old in grades nine (9) through (12);

(k) A student shall maintain amateur standing by engaging in sports only for the physical, educational, and social benefits derived from sports and by not accepting, directly or indirectly, a remuneration, gift, or donation based on his or her participation in a sport other than approved school, LEA, or State awards;

(l) A student is eligible to participate in regular season, playoff, or championship interscholastic athletic contests for a maximum of:

(1) Four (4) semesters (two (2) seasons) in grades four (4) through five (5);

(2) Six (6) semesters (three (3) seasons) in grades six (6) through eight (8); and

(3) Eight (8) semesters (four (4) seasons) in grades nine (9) through twelve (12), consistent with paragraphs in this subsection;

(m) (1) Semester computations pursuant to Subsection (l) shall begin from the semester in which the student was enrolled for the first time in any school in grades four (4), six (6), and nine (9), and shall be counted continuously thereafter, regardless of whether he or she remains continuously enrolled in school.

(2) For student athletes in grades nine (9) through twelve (12), eligibility shall cease at the end of the eighth (8th) semester after first (1st) entering the ninth (9th) grade;

(n) Completion of a summer school program shall not be counted as a semester of attendance;

(o) A student shall participate only under the name by which he or she is registered in the public school he or she attends;

(p) A student’s participation shall be classified as follows:

(1) Grades four (4) and five (5) shall participate on the elementary level;

(2) Grade six (6) shall participate on the elementary level, unless enrolled in grade (6) at a middle school, in which case shall participate on the middle school level;

(3) Grades seven (7) and eight (8) shall participate on the middle school level; and

(3) Grades nine (9) through twelve (12) shall participate on the high school level;

(q) The grade designation on the student's official record, or official transfer record, shall be controlling in determining whether a student is assigned to grades four (4) through six (6) as used in this chapter;

(r) A student shall be considered to be assigned to grades seven (7) through twelve (12), as used in this chapter, based upon the qualifications adopted by the Chancellor of DCPS or the director of another LEA, as applicable; or the grade designation on the official transfer record from another jurisdiction; provided that the student has met the minimum criteria required for the grade;

(s) A student may represent only one (1) school in the same sport during a school year;

(t) A student who has participated in varsity competition in a sport during a school year shall be ineligible to participate in junior varsity competition in the same sport in the same year;

(u) A student who needs fewer than two (2) credits to graduate from twelfth (12th) grade and who transferred to a high school within the preceding twelve (12) months is prohibited from participation in any interscholastic athletic activity for the duration of the student's enrollment at that school;

(v) An international student participating in a foreign exchange program shall be considered immediately eligible for a maximum period of one calendar school year if the student:

(1) Has not completed his or her home secondary school program;

(2) Meets all other eligibility requirements of this section;

(3) Has been randomly assigned to his or her host parents and school and neither the school the student attends nor any person associated with the school has had input in the selection of the

student and no member of the school's coaching staff, paid or voluntary, serves as the resident family of the student;

(4) Possesses a current J-1 visa issued by the U.S. State Department; and

(5) Is attending school under a foreign exchange program on the current Advisory List of International Educational Travel and Exchange Programs published by the Council on Standards for International Education Travel and such program assigns students to schools by a method which ensures that no student, school, or other interested party may influence the assignment;

(w) An international student not participating in a foreign exchange program shall be treated as all other students who transfer schools;

(x) A student in grade nine (9), ten (10), eleven (11), or twelve (12) shall not participate in the same individual or team sport outside of school, or with a team, an organized league, tournament meet, match or contest between the first (1st) and last scheduled contest of the school team during the season of the sport; provided, that a student who is selected to represent the United States in international amateur competition shall not become ineligible in school competitions for participating in qualifying trials. The following sports shall be exempted from the restrictions of this paragraph:

(1) Golf;

(2) Swimming;

(3) Tennis;

(4) Gymnastics;

(5) Volleyball;

(6) Softball;

(7) Track and field;

(8) Cross-country;

(9) Crew;

(10) Soccer;

(11) Cheerleading;

(12) Lacrosse;

(13) Rugby;

(14) Field Hockey; and

(15) Wrestling;

(y) A hardship waiver was granted to the student by the Panel.

2701.6 A request for a waiver of the eligibility requirements shall be made only upon presentation in writing by the AD of an LEA to the SAO for a decision by the Panel, as follows:

(a) A request for a waiver from the requirements in this chapter shall be presented to the SAO in writing with supporting documentation by the LEA;

(b) The SAO shall forward the waiver request received from the AD of an LEA to the Panel; and

(c) No later than five (5) school days after the date of receipt, the Panel shall affirm or deny the waiver request in a written decision.

(d) The decision of the Panel is final.

2702 INELIGIBILITY AND CHALLENGES

2702.1 A student who is ineligible to participate in interscholastic athletics is prohibited from playing, practicing, or otherwise participating with a team in the District of Columbia during the period of such ineligibility.

2702.2 A student who participates in interscholastic athletics and is found ineligible is prohibited from participating in any interscholastic competition for one (1) calendar year from the date of the finding of ineligibility. Additionally, in order to be considered for eligibility when the calendar year has passed, the student must show that all of the eligibility requirements are satisfied.

2702.3 A student who is ineligible to participate in interscholastic athletics at the time of transfer from one (1) school to another, for any reason other than failing to meet the requirements of this chapter, shall not be considered for eligibility at the receiving school until one (1) full calendar year has passed from the date it was determined that the student was ineligible.

2702.4 Each LEA shall establish policies addressing probationary actions based on determinations of ineligibility in accordance with this chapter. The LEA shall provide copies of the written regulations to the SAO no later than August 1 of each school year.

2702.5 Any LEA carrying an ineligible student as a member of the team shall forfeit each contest played by such student.

2702.6 If any forfeiture creates a tie among teams participating in a SAO tournament and/or championship contest, a coin toss as mutually agreed by the school ADs shall determine the requisite order.

2702.7 An LEA, or school official including, without limitation, a coach, trainer, or volunteer assisting in athletics, who knows, or should have known, that an ineligible student is participating or has participated in an interscholastic athletic program or contest, shall be subject to disciplinary action pursuant to LEA regulation or policy.

2702.8 The LEA shall provide the disciplinary determinations pursuant to § 2702.7 to the SAO for review by the Panel no later than five (5) calendar days after the date of such action. The Panel shall investigate the matter and issue a written decision whether the school officer or agent participation in SAO activities shall be reduced, suspended, or revoked, in addition to any LEA actions.

2703 ALL-STAR CONTESTS

2703.1 A student who participates in a team sport may participate in an "all-star" competition for the sport that occurs outside the interscholastic season of the sport without jeopardy to his or her eligibility if:

(a) The all-star competition is an activity sanctioned by the SAO or another National Federation of State High School Association ("NFHS") member**;**

(b) All participants in the all-star competition are graduating seniors or students completing their athletic eligibility at the end of the school year;

(c) The student has played in no more than one (1) other all-star competition in his or her sport; or

(d) The all-star competition occurs after the student has participated in his or her final contest for his or her school.

2703.2 A senior who fails to comply with § 2703.1 shall be subject to a penalty that may result in the loss of athletic eligibility for the balance of the school year. For all other students, the penalty may result in loss of eligibility for the next season in

the sport in which the student participated in the all-star competition. The SAO shall review penalty decisions. The decision of the SAO shall be final.

2704 LEA REGULATIONS

2704.1 All LEA rules, policies, and procedures related to athletics shall be consistent with the provisions of this chapter. Upon request, LEAs shall provide the SAO with copies of their respective rules, policies, and procedures.

2799 DEFINITIONS

2799.1 When used in this chapter, the following terms shall have the meanings ascribed:

Athletic Appeals Panel ("Panel")--A review Panel composed of three (3) people appointed by the State Superintendent of Education on a case by case basis, consisting of one (1) member from the public charter schools, one (1) member from DCPS, and one (1) member from OSSE.

Athletic Director ("AD") – A person who holds the position of athletic director or a person or entity that performs the functions of an athletic director as designated by an LEA.

Boundary Zone or Attendance Zone - The area designated by DCPS as inbounds for a particular residence.

Day – One (1) calendar day, unless otherwise stated.

First year of eligibility – The school year a student first enters ninth (9th) grade for the first (1st) time.

Ninth Grade - A student is considered to be in grade nine (9) upon the student's promotion from the eighth (8th) grade to the ninth (9th grade) on the last school day of the student's eighth (8th) grade (8th) grade academic year. The ninth (9th) grade year is considered to be completed on the thirtieth ($30^{th)}$ calendar day following the last day of the student's first ninth (9th) grade academic year.

Local Education Agency or LEA – means an educational institution at the local level that exists primarily to operate a publicly funded school or schools in the District of Columbia, including the District of Columbia Public Schools (DCPS) and a District of Columbia public charter school.

League – An association of sports teams or clubs that compete mainly against each other.

OSSE – The District of Columbia Office of the Superintendent of State Education.

Participate – Inclusion on the tryout roster or team roster as a member of a recognized school team to tryout or play in practices, contests, and competitions, or otherwise engaging in other activities as part of the team.

Previous participation – Prior participation in interscholastic athletics in grades nine (9) through twelve (12).

Public School – A school within the District of Columbia Public Schools ("DCPS") system, a District of Columbia public charter school, or a private school member participating in the District-wide competitions approved by the SAO.

Receiving school - The school a student enrolls in, after leaving his or her previous school.

Sending School – A school that a student withdraws from, in order to attend a different school.

Semester ("full academic semester") -- A semester is approximately two (2) marking periods during which academic coursework towards graduation requirements occurs but does not include the summer.

Statewide Athletics Office (SAO) – A unit of the Office of the State Superintendent of Education that directs, coordinates, and provides guidance for interscholastic athletic programs.

Title IX - Title IX is a portion of the Education Amendments of 1972, approved June 23, 1972 (Pub. L. No. 92-318, 86 Stat. 235 20 U.S.C. §§ 1681 – 1688).

Transfer - The student has withdrawn from a sending school and has enrolled in a receiving school.

Week – Seven (7) calendar days, unless otherwise stated.

THE DISTRICT OF COLUMBIA HOUSING AUTHORITY

NOTICE OF FINAL RULEMAKING

The Board of Commissioners of the District of Columbia Housing Authority (DCHA) pursuant to the District of Columbia Housing Authority Act of 1999, effective May 9, 2000 (D.C. Law 13-105; D.C. Official Code § 6-203 (2012 Repl.)), hereby gives notice of the adoption the following amendments to Chapter 61 (Public Housing: Admission and Recertification) of Title 14 (Housing) of the District of Columbia Municipal Regulations (DCMR).

The Notice of Proposed Rulemaking was published on September 20, 2013 at 60 DCR 13195. No substantive comments were received to the Proposed Rulemaking. The final action was taken to adopt this rulemaking was taken at the Board of Commissioners regular meeting on November 5, 2013. The final rules will become effective on the date of publication of this notice in the *D.C. Register*.

Chapter 6118 (Recertification) of Chapter 61 (Public Housing: Admission and Recertification) of Title 14 (Housing) of the DCMR is amended as follows:

The introductory paragraph to Subsection 6118.1 is amended as follows:

6118.1 Lessee shall recertify, biennially, and shall be responsible for providing to DCHA a completed application for continued occupancy, including the appropriate verification forms. The forms are those provided by or otherwise authorized by DCHA. The Lessee's responsibility to provide a completed application for continued occupancy, including the appropriate verification forms shall include but is not limited to the following:

THE DISTRICT OF COLUMBIA
LOTTERY AND CHARITABLE GAMES CONTROL BOARD
NOTICE OF PROPOSED RULEMAKING

The Executive Director of the District of Columbia Lottery and Charitable Games Control Board, pursuant to the authority set forth in the 2005 District of Columbia Omnibus Authorization Act, approved October 16, 2006 (Pub. L. No. 109-356, § 201, 120 Stat. 2019; D.C. Official Code §§ 1-204.24a(c)(6) (2012 Repl.)); Section 4 of the Law to Legalize Lotteries, Daily Numbers Games, and Bingo and Raffles for Charitable Purposes in the District of Columbia, effective March 10, 1981 (D.C. Law 3-172; D.C. Official Code §§ 3-1306(a), 3-1322 and 3-1324 (2012 Repl.)); District of Columbia Financial Responsibility and Management Assistance Authority Order issued September 21, 1996; and Office of the Chief Financial Officer Financial Management Control Order No. 96-22 issued November 18, 1996, hereby gives notice of his intent to amend Chapters 15, "Raffles," and 99, "Definitions," of Title 30, "Lottery and Charitable Games," of the District of Columbia Municipal Regulations (DCMR).

These amendments are necessary to implement 50/50 raffles conducted by charitable foundations established by or affiliated with professional sports teams.

The Executive Director gives notice of his intent to take final rulemaking action to adopt the amendments in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Chapter 15, "RAFFLES," of Title 30, "LOTTERY AND CHARITABLE GAMES," of the DCMR is amended as follows:

Add Section 1509 to read as follows:

1509 RAFFLES CONDUCTED BY CHARITABLE FOUNDATIONS ESTABLISHED BY OR AFFILIATED WITH A PROFESSIONAL SPORTS TEAM

1509.1 Eligibility.

(a) In order to receive a license to conduct a 50/50 raffle, a qualified organization shall be established by or affiliated with a professional sports team that is a member of at least one of the following professional sports leagues:

(1) Major League Baseball (MLB);

(2) Major League Soccer (MLS);

(3) National Basketball Association (NBA);

(4) National Football League (NFL);

(5) National Hockey League (NHL);

(6) Women's National Basketball Association (WNBA);

(7) World Team Tennis (WTT); or

(8) Any other professional sports league designated, in writing, by the Executive Director.

(b) The charitable foundation that is established by or affiliated with a professional sports team shall meet all other eligibility requirements to obtain a license to conduct raffles under Chapter 12 of Title 30 of the DCMR.

(c) The charitable foundation that is established by or affiliated with a professional sports team shall complete all forms and provide all information to the Board required under Chapter 12 of Title 30 of the DCMR.

1509.2 Operation of 50/50 Raffles.

(a) 50/50 raffles are subject to all of the applicable requirements established by Chapters 12, 13, 15 and 17 of Title 30 of the DCMR except where specifically indicated in this rule.

(b) A person may purchase one or more 50/50 raffle tickets at a professional sporting event located within the District of Columbia.

(c) Each 50/50 raffle ticket purchased shall represent one entry in the drawing for a winner.

(d) The game rules shall state when the drawing shall take place. For example, the rules shall explain that the drawing will occur after a certain number of tickets are sold or after a specified time period expires. The drawing shall take place during the professional sporting event where the 50/50 raffle tickets are sold.

(e) Game rules shall determine the number of winners that will be chosen randomly from the 50/50 raffle tickets that were sold.

(f) The total prize amount of a 50/50 raffle ticket drawing shall be 50% of the net proceeds collected from the sale of the 50/50 raffle tickets.

(g) The remaining 50% of the net proceeds collected from the sale of the 50/50 raffle tickets shall be dispersed for the lawful purpose stated in the application.

(h) No more than one 50/50 raffle drawing shall be conducted during a single professional sporting event.

(i) Sections 1502.1(c) and (d), Section 1504.1, and Section 1504.2 shall not apply to 50/50 raffles.

Chapter 99, "DEFINITIONS," of Title 30, "LOTTERY AND CHARITABLE GAMES," of the DCMR is amended as follows:

Amend Subsection 9900.1 by inserting the following:

50/50 Raffle - is a raffle where 50% of the net proceeds of ticket sales are awarded to one or numerous persons buying tickets and the remaining 50% of the net proceeds are dispersed for the lawful purpose stated in the raffle application.

Professional Sporting Event - an event at which two or more persons participate in sports or athletic events and receive compensation in excess of actual expenses for their participation in such event.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with Antar Johnson, Assistant General Counsel, District of Columbia Lottery and Charitable Games Control Board, 2101 Martin Luther King, Jr., Avenue, S.E., Washington, D.C. 20020, or sent by e-mail to antar.johnson@dc.gov, or filed online at www.dcregs.gov. Additional copies of these proposed rules may be obtained at the address stated above.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF PROPOSED RULEMAKING

FORMAL CASE NO. 1017, IN THE MATTER OF THE DEVELOPMENT AND DESIGNATION OF STANDARD OFFER SERVICE IN THE DISTRICT OF COLUMBIA

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice, pursuant to Section 34-802 of the District of Columbia Official Code and in accordance with Section 2-505 of the District of Columbia Official Code,[1] of its intent to act upon the proposed tariff amendment of the Potomac Electric Power Company ("Pepco" or "Company")[2] in not less than thirty (30) days from the date of publication of this Notice of Proposed Rulemaking ("NOPR") in the *D.C. Register.*

2. Pepco's proposed tariff amendment updates the retail transmission rates included in the Rider Standard Offer Service "to reflect the current Federal Energy Regulatory Commission ('FERC') approved wholesale transmission rates, which went into effect [on] June 1, 2013."[3] The Company states that the "updated Network Integrated Transmission Service rate is based on the data in the 2012 FERC Form 1 for Pepco, which was filed with the FERC on April 17, 2013."[4] According to Pepco, this Network Integrated Transmission Service rate reflects two separate charges: a Schedule 12 Transmission Enhancement charge of $19,768 per megawatt-year for projects within the Pepco Zone[5] and a Schedule 12 Transmission Enhancement charge of $3,494 per megawatt-year for projects outside the Pepco Zone.[6] Pepco states that combining "these two rates results in an overall wholesale transmission rate for load in the PEPCO Zone of $23,262 per megawatt-year."[7] The Company asks that the amended retail transmission rates tariff be effective for usage "on or after November 8, 2013."[8]

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[1] D.C. Official Code § 34-802 (2012 Repl.); D.C. Official Code § 2-505 (2012 Repl.).

[2] *Formal Case No. 1017, In the Matter of the Development and Designation of Standard Offer Service in the District of Columbia,* Letter from Peter E. Meier, Vice President, Legal Services, Potomac Electric Power Company, to Brinda Westbrook-Sedgwick, Commission Secretary, Public Service Commission of the District of Columbia (Oct. 8, 2013) ("Pepco Letter").

[3] Pepco Letter.

[4] Pepco Letter.

[5] Pepco Letter. *See* Attachment E.

[6] Pepco Letter. *See* Attachment D.

[7] Pepco Letter. *See* Attachment A. Pepco indicates that Attachment A also shows the "corresponding retail transmission revenue requirements." The Proposed Rider Standard Offer Service ("SOS") containing the revised retail rates for Transmission Service are provided at Attachment B. Also included in Attachment B are the updated Rider SOS "showing additions and deletions from the current Rider 'SOS.'" Finally, Pepco indicates that "workpapers showing the details of the rate design calculations are provided as Attachment C."

[8] Pepco Letter. *See* Attachment B.

3. Pepco proposes to amend the following thirteen (13) tariff pages:

ELECTRICITY TARIFF, P.S.C.-D.C. No. 1
Seventieth Revised Page No. R-1
Seventieth Revised Page No. R-2
Sixty-Third Revised Page No. R-2.1
Thirty-Ninth Revised Page No. R-2.2
Eighteenth Revised Page No. R-41
Eighteenth Revised Page No. R-41.1
Eighteenth Revised Page No. R-41.2
Eighteenth Revised Page No. R-41.3
Eighteenth Revised Page No. R-41.4
Eighteenth Revised Page No. R-41.5
Eighteenth Revised Page No. R-41.6
Eighteenth Revised Page No. R-41.7
Eighteenth Revised Page No. R-41.8

4. The filing may be reviewed at the Office of the Commission Secretary, 1333 H Street, N.W., Second Floor, West Tower, Washington, D.C. 20005, between the hours of 9:00 a.m. and 5:30 p.m., Monday through Friday. A copy of the proposed tariff amendment is available upon request, at a per-page reproduction cost from the Office of the Commission Secretary or via the Commission's website at www.dcpsc.org.

5. Comments and reply comments on Pepco's proposed tariff amendment must be made in writing to Brinda Westbrook-Sedgwick, Commission Secretary, at the address above. All comments and reply comments must be received not later than thirty (30) and forty-five (45) days, respectively, after publication of this NOPR in the *D.C. Register*. Once the comment period has expired, the Commission will take final rulemaking action on Pepco's filing.

OFFICE OF TAX AND REVENUE

NOTICE OF SECOND PROPOSED RULEMAKING

The Deputy Chief Financial Officer of the District of Columbia Office of Tax and Revenue (OTR) of the Office of the Chief Financial Officer, pursuant to the authority set forth in D.C. Official Code § 47-2023 (2012 Repl.), Section 201(a) of the 2005 District of Columbia Omnibus Authorization Act, approved October 16, 2006 (120 Stat. 2019; P.L. 109-356, D.C. Official Code § 1-204.24d (2012 Repl.)), and the Office of the Chief Financial Officer Financial Management and Control Order No. 00-5, effective June 7, 2000, hereby gives notice of its intent to amend Chapter 4, SALES AND USE TAXES, of Title 9, TAXATION AND ASSESSMENTS, of the District of Columbia Municipal Regulations (DCMR), by adding Section 476, Admissions, Rentals of Boats, and Sales of Food, Drinks, and Beverages on Boats.

The newly proposed Section 476 provides that sales tax is due on admissions to public events which occur on boats, provides that sales tax does not apply to boat charters which include the services of a captain, and provides guidance for the application of the sales tax exemption for food and drink or alcoholic beverages sold on a boat that is in the course of commerce between the District and a state. The guidance that would be provided by this rulemaking is necessary to provide clarity to taxpayers attempting to comply with District sales and use tax statutes and would aid in the fair and efficient administration of District laws.

A version of these rules was originally published in the *D.C. Register* as a proposed rulemaking on July 19, 2013 at 60 DCR 10753. Based on public comments received, this proposed regulation has been modified to remove the sale of tickets to boat tours and cruises from sales tax unless such ticket sales include either admission to a public event or food and drink.

OTR gives notice of its intent to take final rulemaking action to adopt these regulations in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Chapter 4, Sales and Use Taxes, of Title 9 DCMR, Taxation and Assessments, is amended as follows:

Section 476, Admissions, Rentals of Boats, and Sales of Food, Drinks, and Beverages on Boats, is added to read as follows:

476 ADMISSIONS, RENTALS OF BOATS, AND SALES OF FOOD, DRINKS, AND BEVERAGES ON BOATS

476.1 The charges for admission to public events subject to gross sales tax under D.C. Official Code § 47-2001(n)(1)(H) shall be subject to gross sales tax when such public events occur on a boat.

476.2 If the services of a captain or operator are provided as part of the fee for the charter of any boat, no rental of the boat has occurred. If the boat is rented from

one person and the services of the captain or operator rented from another, the gross sales tax shall apply to the boat rental.

476.3 A boat rented without the services of a captain or operator, including a bareboat charter, is a sale in which possession of tangible personal property is transferred, and the gross sales tax shall apply to such rentals.

476.4 The taxability of food and drink or alcoholic beverages sold on a boat is determined as follows:

(a) Gross receipts from the sales of food and drink or alcoholic beverages if made in any boat operating within the District in the course of commerce between the District and a state are exempt from the gross sales tax. Generally, a boat is operating in the course of commerce between the District and a state if the boat ties up at a dock outside of the District where any or all passengers or crew disembark or if any or all of the boat's passengers or crew disembark the boat by other means and go ashore outside of the District.

Example: A boat that departs and returns to the same or different location in the District and does not tie up at a dock or allow passengers to disembark at a location outside of the District shall not be considered to be in the course of commerce between the District and a state, even if the boat enters another jurisdiction's waters.

(b) In order to substantiate the exemption, a taxpayer must prove, via his or her books and records, that a boat is in the course of commerce between the District and a state. To the extent the taxpayer's books and records do not substantiate that a boat is in the course of commerce between the District and a state, all sales of food and drink or alcoholic beverages allocated to the District shall be presumed taxable.

(c) For boats not operating in the course of commerce between the District and a state, a taxpayer shall substantiate in his or her books and records the allocation of sales of food and drink or alcoholic beverages to the District. All such allocations must be reasonable. To the extent the allocation of sales of food and drink or alcoholic beverages cannot be substantiated by the taxpayer's books and records or the allocation on the taxpayer's books is unreasonable, the Deputy Chief Financial Officer shall allocate the sales to the District.

476.5 If charges for admission to public events are included in the ticket price of a boat tour or boat cruise, the entire ticket price shall be subject to gross sales tax at the rate applicable to charges for admission to public events. If taxable food and drink or alcoholic beverages are included in the ticket price of a boat tour or boat cruise, the entire ticket price shall be subject to gross sales tax at the rate

applicable to charges for food and drink. If both charges for admission to public events and charges for taxable food and drink or alcoholic beverages are included in the ticket price of a boat tour or boat cruise, the entire ticket price shall be subject to gross sales tax at the rate applicable to food and drink.

476.6 For the purposes of this section, the following definitions apply.

(a) **"Bareboat charter"** means providing a boat only, exclusive of crew.

(b) **"Boat"** means a vessel for transport by water and includes, but is not limited to, ships, yachts, sailboats, rowboats, motorboats, kayaks, paddleboats, and canoes.

(c) **"Captain or operator"** means a person who is master or commander of a boat with passengers or crew, or both.

(d) **"Dock"** means a structure or group of structures involved in the handling of boats or ships, on or close to a shore and includes piers and wharfs.

Comments on this proposed rulemaking should be submitted to Jessica Brown, Assistant General Counsel, Office of Tax and Revenue, no later than thirty (30) days after publication of this notice in the *D.C. Register*. Jessica Brown may be contacted by: mail at DC Office of Tax and Revenue, 1101 4th Street, SW, Suite 750, Washington, DC 20024; telephone at (202) 442-6462; or, e-mail at jessica.brown@dc.gov. Copies of this rule and related information may be obtained by contacting Jessica Brown as stated herein.

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF EMERGENCY RULEMAKING

The Alcoholic Beverage Control Board (Board), pursuant to the authority set forth in D.C. Official Code § 25-351(a) (2012 Repl.) and Section 306 of Title 23 of the District of Columbia Municipal Regulations (DCMR), hereby gives notice of the following emergency rules to extend the existing East Dupont Circle Moratorium Zone (EDCMZ) for one hundred and twenty (120) days in order to maintain the current limit on the number of retailer's licenses Class A, B, CR, CT, CN, CX, DR, DT, DN, and DX issued in a portion of East Dupont Circle.

Emergency rulemakings are used only for the immediate preservation of the public peace, health, safety, welfare, or morals, pursuant to 1 DCMR § 311.4(e). The existing EDCMZ expired September 23, 2013. As a result, the Board found it necessary to extend the existing EDCMZ in order to hold a public hearing and make a determination regarding the future of the EDCMZ. This emergency action is necessary for the preservation of the health, safety and welfare of the District residents by: (1) ensuring that the limitations placed on the issuance of new retailer's licenses Class A, B, CR, CT, CN, CX, DR, DT, DN, and DX are maintained; and (2) to keep the existing EDCMZ in place until the Board can adopt final rules regarding its renewal.

The Board received two proposals regarding the existing EDCMZ. On August 19, 2013, Advisory Neighborhood Commission (ANC) 2B filed a Resolution to Extend and Modify the East Dupont Circle Liquor Moratorium (Resolution). This Resolution was adopted by the ANC on August 14, 2013. The ANC Resolution resulted from a series of public meetings that were held by the ANC from May 2013 through August 2013, with the purpose of receiving public input from stakeholders and constituents in order to formulate a recommendation for the Board.

In summary, the ANC seeks renewal of the existing EDCMZ for a three (3) year period with certain modifications. Those modifications include maintaining the cap on Retailer Class CT/DT and CN/DN; lifting the restrictions on the number of Retailer Class A, Class B and Class CR/DR licenses; retaining the current exemptions for hotels; retaining the existing language pertaining to the transfer of ownership; retaining the prohibition on the transfer of Retailer Class CT/DT or CN/DN from outside the moratorium zone to inside the moratorium zone; and retain the prohibition on the change of all Retailer Class CT/DT or CN/DN licenses.

The second proposal was submitted by the Dupont Circle Citizens Association (DCCA) on August 13, 2013. The DCCA requests a temporary one hundred twenty (120) day extension to allow time for further research. Additionally, the DCCA seeks to collect additional data it deems relevant to the undertaking of this rulemaking; specifically the status of inactive licenses, and the analysis of the potential effects of all options. Furthermore, the DCCA desires to form a working group on retail and arrive at a collaborative agreement with other interested parties.

The Board believes that both of these proposals merit further evaluation. Thus the Board seeks an extension of the existing EDCMZ to avoid its expiration and to hold a hearing to receive

public comments on the proposals. A public hearing was scheduled for October 24, 2013, at 9:30 am.

These emergency rules were adopted by the Board on September 18, 2013, by a five (0) to zero (0) vote and became effective on that date. The rules will remain in effect for up to one hundred twenty (120) days, expiring January 18, 2014, unless earlier superseded by proposed and final rulemakings.

Section 306, EAST DUPONT CIRCLE MORATORIUM ZONE, of Chapter 3, LIMITATIONS ON LICENSES, of Title 23, ALCOHOLIC BEVERAGES, of the DCMR, reads as follows:

306 EAST DUPONT CIRCLE MORATORIUM ZONE.

306.1 A limit shall exist on the number of Retailer's licenses issued in the area that extends approximately six hundred (600) feet in all directions from the intersection of 17th and Q Streets, N.W., Washington, D.C., as follows: Class A – Two (2); Class B – Two (2); Class CR or Class DR – Sixteen (16); Class CT or Class DT – Two (2); Class CN or DN – Zero (0); and Class CX or Class DX – Zero (0). This area shall be known as the East Dupont Circle Moratorium Zone.

306.2 The East Dupont Circle Moratorium Zone is more specifically described as the area bounded by a line beginning at New Hampshire Avenue and S Street, N.W.; continuing east on S Street, N.W., to 17th Street, N.W.; continuing south on 17th Street, N.W., to Riggs Place, N.W.; continuing east on Riggs Place, N.W., to 16th Street, N.W.; continuing south on 16th Street, N.W., to P Street, N.W.; continuing west on P Street, N.W., to 18th Street, N.W.; continuing north on 18th Street, N.W., to New Hampshire Avenue, N.W.; and continuing northeast on New Hampshire Avenue, N.W. to S Street, N.W.

306.3 All hotels, whether present or future, shall be exempt from the East Dupont Circle Moratorium Zone.

306.4 Nothing in this section shall prohibit the Board from approving the transfer of ownership of a Retailer's license Class A, B, CR, CT, DR, or DT located within the East Dupont Circle Moratorium Zone, subject to the requirements of the Act and this title.

306.5 Nothing in this section shall prohibit the Board from approving the transfer of a license from a location within the East Dupont Circle Moratorium Zone to a new location within the East Dupont Circle Moratorium Zone.

306.6 A license holder outside the East Dupont Circle Moratorium Zone shall not be permitted to transfer its license to a location within the East Dupont Circle Moratorium Zone unless the transfer will not exceed the number of licenses

permitted in the East Dupont Circle Moratorium Zone for that particular class or type, as set forth in Section 306.1.

306.7 Subject to the limitation set forth in Section 306.8, nothing in this section shall prohibit the filing of a license application or a valid protest of any transfer or change of license class.

306.8 No licensee in the East Dupont Circle Moratorium Zone shall be permitted to request a change of license class to CT, DT, CN, or DN.

306.9 No more than four (4) lateral expansion applications shall be approved by the Board in the East Dupont Circle Moratorium Zone. If four (4) lateral expansion applications are approved by the Board, current holders of a Retailer's license Class A, B, C, or D within the East Dupont Moratorium Zone shall not be permitted to apply to the Board for expansion of service or sale of alcoholic beverages into any adjoining or adjacent space, property, or lot, unless either: (a) the prior owner or occupant of the adjacent space, property, or lot held within the prior five (5) years a Retailer's license Class A, B, C, or D; or (b) the adjacent space, property, or lot had, for the prior five (5) years, a certificate of occupancy or building permit held in the name of the current holder of the Retailer's license Class A, B, C, or D seeking the lateral expansion. Nothing in this section shall prohibit holders of a Retailer's license Class C or D from applying for outdoor seating in public space.

306.10 This section shall expire three (3) years after the date of publication of the notice of final rulemaking.

OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

NOTICE OF EMERGENCY AND SECOND PROPOSED RULEMAKING

The State Superintendent of Education, pursuant to the authority set forth in Section 3(b) of the District of Columbia State Education Office Establishment Act of 2000, effective October 21, 2000 (D.C. Law 13-176; D.C. Official Code § 38-2602(b)(11) (2012 Repl.)); Section 107(d) of the Uniform Per Student Funding Formula for Public Schools and Public Charter Schools and Tax Conformity Clarification Amendment Act of 1998, effective March 26, 1999, as amended (D.C. Law 12-207; D.C. Official Code § 38-2906 (2012 Repl.)); Section 2002 of the District of Columbia School Reform Act of 1995, approved April 26, 1996 (110 Stat. 1321; D.C. Official Code § 38-1802.02(19) (2012 Repl.)); and Section 618 of the Individuals with Disabilities Education Act, approved December 3, 2004 (118 Stat. 2738; 20 U.S.C. § 1418) ("IDEA"), and its implementing regulations (34 C.F.R. §§ 300.640 through 300.644), hereby gives notice of an emergency rulemaking adopting an amendment to Section 3002 (LEA Responsibility) of Chapter 30 (Special Education Policy) of Title 5-E (Education, Original Title 5) of the *District of Columbia Municipal Regulations* ("DCMR"), and adopting an amendment deleting Paragraphs 3019.3(f) and 3019.4(c) (Annual Reporting Requirements, Responsibilities of LEA Charters and Responsibilities of District Charters) in Section 3019 (Charter Schools) of Chapter 30 (Special Education Policy) of Title 5-E (Education, Original Title 5) DCMR.

The purpose of this emergency and second proposed rulemaking is to establish immediately the requirement for all local educational agencies ("LEAs") in the District of Columbia annually to count the number of children enrolled in the LEA who receive special education and related services, in accordance with Section 618 of the IDEA, on a date as determined by the Office of the State Superintendent of Education ("OSSE"). The IDEA requires States to count and report the number of children with disabilities receiving special education and related services on any date between October 1 and December 1 of each year. This is known as the IDEA "child count," which is required to receive federal IDEA funding made available to States.

The current regulations in Section 3019 of Title 5-E of the DCMR require District of Columbia public charter schools to perform the IDEA required "child count" on December 1 and to certify the results of that count in January of the following year.

District of Columbia law, however, also requires a "pupil count" of all students, including students with disabilities, on October 5 each year. This pupil count has already occurred this year. This prior pupil count is used to determine the level of local funding for local educational agencies. Under current law and rules, two counts potentially covering special education students are undertaken.

This emergency and second proposed rulemaking permits OSSE to align the two counts immediately, avoiding the need for charter schools to take another count by December 1, 2013, in addition to the count already taken. It will permit OSSE to align the IDEA child count with the annual pupil count immediately for a period of one hundred twenty days, pending the receipt of public comments and the hearings regarding alignment permanently. It will thus forego needless significant expenditure of public funds which could be used for the well-being and

health of special education students. Also, failure without regulatory approval to conform to the legal requirements of the IDEA, including the submission of information as required by OSSE as the State Education Agency ("SEA") under current Regulations 5-E DCMR § 3002 and 5-E DCMR § 3019, may result in adverse actions or sanctions for LEAs, while failure to eliminate the second "child count" requirement would leave the burden of requiring public charter schools and OSSE to perform an additional count of children with disabilities receiving special education and related services under the IDEA.

The second count as now imminently required by regulation, unless waived by this emergency and second rulemaking, would be superfluous and require the expenditure of funds more appropriately used to ensure the well-being and welfare of the communities involved.

An initial proposed version of this rulemaking was published for public comment on August 23, 2013, at 60 DCR 12222. This emergency and proposed second version of the rulemaking reflects consideration given to comments received during and in follow-up to the public comment period, including that specific reference be made to the annual pupil count already taken in October 2013, and to the IDEA implementing regulations. The amended rule will allow OSSE to align more precisely the annual IDEA child count to the annual enrollment pupil count required by District of Columbia law.

The emergency rulemaking was adopted on November 15, 2013, and shall remain in effect for one hundred twenty (120) days, expiring on March 17, 2014, or upon publication of a Notice of Final Rulemaking in the *D.C. Register,* whichever occurs first.

The State Superintendent also gives notice of his intent to take final rulemaking action on the second proposed rulemaking to amend Section 3002 and to delete Paragraphs 3019.3(f) and 3019.4(c) in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register.*

This notice is being circulated through the District for a thirty (30) day period, providing a renewed opportunity to submit written comments, and to attend public hearings on the proposal scheduled on Monday, December 9, 2013, between 3:00 pm and 4:30 pm, at the Office of the State Superintendent of Education ("OSSE"), 3rd Floor Grand Hall Side B, 810 First Street, NE, Washington, D.C. 20002, and on Wednesday, December 11, 2013, between 3:00 pm and 4:30 pm, at the OSSE 8th Floor Conference Room 806A, 810 First Street, Washington, D.C. 20002.

Final rulemaking action will not be taken until thirty (30) days after the date of publication of this notice in the *D.C. Register*.

Section 3002 (LEA Responsibility) of Chapter 30 (Special Education Policy) of Title 5, Subtitle E (Education, Original Title 5) of the DCMR is amended to read as follows:

3002.5

(a) DCPS and all public charter schools shall count the number of children with disabilities receiving special education and related services annually

on October 5 or the date set for the annual pupil count required by D.C. Official Code § 38-2906.

(b) DCPS and public charter schools that have not elected DCPS to serve as the public charter school's LEA for special education purposes shall report the count to OSSE each year and provide the information required by the Section 618 of the Individuals with Disabilities Education Act, approved December 3, 2004 (118 Stat. 2738; 20 U.S.C. § 1418) ("IDEA") and its implementing regulations (34 CFR §§ 300.640 through 300.644), in accordance with a timeline specified by OSSE, and shall certify to OSSE that an unduplicated and accurate count has been made.

(c) A public charter school that has elected DCPS to serve as its LEA for special education purposes shall report its count to DCPS and provide to DCPS the information required by Section 618 of the IDEA and its implementing regulations (34 C.F.R. §§ 300.640 through 300.644), in accordance with a timeline specified by OSSE, and shall certify to DCPS that an unduplicated and accurate count has been made.

Subparagraphs 3019.3(f) and 3019.4(c) (Annual Reporting Requirements, Responsibilities of LEA Charters and Responsibilities of District Charters) of Section 3019 (Charter Schools) of Chapter 30 (Special Education Policy) of Title 5-E (Education, Original Title 5) of the DCMR are deleted in their entirety, and Section 3019 (Charter Schools) is re-numbered to reflect their deletion.

Persons desiring to comment on the subject matter of this proposed rulemaking should attend the hearing scheduled at scheduled on Monday, December 9, 2013, between 3:00 pm and 4:30 pm, at the Office of the State Superintendent of Education ("OSSE"), 3rd Floor Grand Hall Side B, 810 First Street, NE, Washington, D.C. 20002, and on Wednesday, December 11, 2013, between 3:00 pm and 4:30 pm, at the OSSE 8th Floor Conference Room 806A, 810 First Street, Washington, D.C., or should file comments in writing by mail or hand delivery to the Office of the State Superintendent of Education, Attn: Jamai Deuberry re: "IDEA Child Count Regulations", 810 First Street, NE 9th Floor, Washington, DC 20002 [(202) 727-6436] or to Jamai.Deuberry@dc.gov with subject "Attn: Jamai Deuberry, IDEA Child Count", or both, not later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Additional copies of this rule are available from the above address and on the Office of the State Superintendent of Education website at www.osse.dc.gov.

DISTRICT OF COLUMBIA BOARD OF ELECTIONS

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The District of Columbia Board of Elections, pursuant to the authority set forth in D.C. Official Code § 1-1001.05(a)(14), hereby gives notice of proposed and emergency rulemaking action to adopt amendments to the following chapters in Title 3, "Elections and Ethics", of the District of Columbia Municipal Regulations (DCMR): Chapter 5, "Voter Registration"; Chapter 6, "Eligibility of Candidates"; Chapter 7, "Election Procedures"; Chapter 10, "Initiative and Referendum"; Chapter 11, "Recall of Elected Officials"; Chapter 13, "Filling Vacant Seats on Advisory Neighborhood Commissions"; Chapter 14, "Candidates: Political Party Primaries for Presidential Preference and Convention Delegates"; Chapter 15, "Candidates: Electors of President and Vice-President"; Chapter 16, "Candidates: Delegate to the U.S. House of Representatives, Mayor, Chairman, Members of the Council of the District of Columbia, U.S. Senator, U.S. Representative, Members of the State Board of Education, and Advisory Neighborhood Commissioners"; Chapter 17, "Candidates: Members and Officials of Local Committees of Political Parties and National Committee Persons"; and Chapter 20, "Freedom of Information."

With some exceptions, the amendments to Chapters 6, 7, 10, 11 and 13 – 17 are largely organizational and editorial changes to enhance readability and consistency within and across chapters. To effectuate the organizational changes, rules concerning ballots were removed from these chapters and placed in a proposed Chapter 12, "Ballots." Chapters 10, 11 and 13-17 include amendments concerning non-resident petition circulators which would bring the rules into conformity with the Board of Elections Petition Circulation Requirements Amendment Act of 2013 effective October 17, 2013 (D.C. Law 20-0031; 60 DCR 11535). The amendments to Chapter 5 revise the effective date of changes to party affiliation status on applications received fewer than 30 days prior to a primary to be the date following the scheduled primary. The amendments to Chapter 20 revise rules to mirror the processing procedures of FOIA requests at subordinate agencies.

This emergency rulemaking is necessary for the immediate preservation of the public peace and welfare of District residents because rules governing ballot access and candidacy must be effective prior to the nominating petition circulation period for the April 1, 2014 Primary Election, which will begin on November 8, 2013.

The Board adopted these emergency rules at its regularly monthly meeting on Wednesday, November 6, 2013, at which time the amendments became effective. The emergency amendments to the rules will expire on Thursday, March 6, 2014, one hundred twenty (120) days after the emergency rulemaking took effect.

The Board gives notice of its intent to take final rulemaking action to adopt these amendments in not less than 30 days from the date of publication of this notice in the *D.C. Register.*

Section 500 (General Requirements and Qualifications) of Chapter 5 (Voter Registration) of Title 3 (Elections and Ethics) of the District of Columbia Municipal Regulations (DCMR) is amended in its entirety to read as follows:

500 GENERAL REQUIREMENTS AND QUALIFICATIONS

500.1 No person shall be registered to vote in the District of Columbia unless he or she:

(a) Is a qualified elector as defined by D.C. Official Code § 1-1001.02(2) (2011 Repl.); and

(b) Executes a voter registration application by signature or mark on a form approved by the Board or by the Election Assistance Commission attesting that he or she meets the requirements as a qualified elector.

500.2 A person is a "qualified elector" if he or she:

(a) For a primary election, is at least seventeen (17) years of age and will be eighteen (18) on or before the next general election, or for a general or special election, is at least eighteen (18) years of age on or before the date of the general or special election;

(b) Is a citizen of the United States;

(c) Is not incarcerated for the conviction of a crime that is a felony in the District;

(d) Has maintained a residence in the District for at least thirty (30) days preceding the next election and does not claim voting residence or the right to vote in any state or territory; and

(e) Has not been adjudged legally incompetent to vote by a court of competent jurisdiction.

500.3 An applicant shall provide the following information on a voter registration application:

(a) Applicant's complete name;

(b) Applicant's current and fixed residence address in the District;

(c) Applicant's date of birth;

(d) Applicant's original signature; and

(e) Applicant's driver's license number in the case of an applicant who has been issued a current and valid driver's license, or the last four (4) digits of the applicant's social security number. If an applicant for voter registration has not been issued a current and valid driver's license or a social security number, the Board shall assign the applicant a unique identifying number which shall serve to identify the applicant for voter registration purposes.

500.4 A person who is otherwise a qualified elector may pre-register on or after his or her sixteenth (16th) birthday, but he or she shall not vote in any primary election unless he or she is at least seventeen (17) years of age and will be eighteen (18) on or before the next general election or in any general or special election unless he or she is at least eighteen (18) years of age on or before the date of the general or special election.

500.5 An applicant for voter registration who is unable to sign or to make a mark on a voter registration application due to a disability may apply with the assistance of another person as long as the individual's voter registration application is accompanied by a signed affidavit from the person assisting the applicant which states the following:

(a) That he or she has provided assistance to the applicant;

(b) That the applicant is unable to sign the registration form or to make a mark in the space provided for his or her signature;

(c) That he or she has read or explained the information contained in the application and the voter declaration to the applicant, if the applicant cannot read the information; and

(d) That he or she has read or explained the penalties for providing false information on the registration application, if the applicant cannot read the information.

500.6 If the applicant is unable to sign his or her name, the applicant may place his or her mark in the space provided for his or her signature and have that mark witnessed by the person assisting by having the witness also sign the voter registration application.

500.7 If an applicant for voter registration fails to provide the information required for registration, the Registrar or his or her designee shall make reasonable attempts to notify the applicant of the failure. A reasonable attempt to notify the applicant may include a phone call, letter, or email. The Registrar shall choose the most efficient method of communication based upon the contact information provided by the applicant.

500.8 Unless otherwise specified in this chapter, a voter registration application, or a notice of change of name, address, or party affiliation status, is considered to be received by the Board upon acknowledgement of receipt by the Board's date-stamp.

500.9 Unless otherwise specified in this chapter, the effective date of registration, or updates thereto, shall be the date that the application was received.

500.10 The current and fixed residence address provided by a voter will be used to send any official communications required by law to the voter unless the voter provides an alternative mailing address.

500.11 The information that the voter provides to the Board, such as that voter's current and fixed residence, shall be sufficiently precise to enable the Board to assign the voter to the appropriate Ward, Precinct, and Advisory Neighborhood Commission Single-Member District.

500.12 Any applicant who provides on a voter registration application a registration address to which mail cannot be delivered by the U.S. Postal Service shall additionally provide to the Board a designated mailing address to facilitate any official communications required by law.

500.13 Any applicant utilizing these procedures to fraudulently attempt to register shall be subject to the same criminal sanctions pursuant to D.C. Official Code § 1-1001.14 (a) (2011 Repl.).

500.14 The Board's official Voter Registration Application cannot be altered in any way for use by another individual or organization for the purpose of registering electors in the District of Columbia.

Section 510 (Voter Registration Application Processing: In-Person at the Board of Elections and Ethics or a Voter Registration Agency (VRA)) of Chapter 5 of Title 3 of the District of Columbia Municipal Regulations (DCMR) is amended in its entirety to read as follows:

510 VOTER REGISTRATION APPLICATION PROCESSING: IN-PERSON AT THE BOARD OF ELECTIONS' OFFICE OR A VOTER REGISTRATION AGENCY (VRA)

510.1 Prior to the thirtieth (30th) day preceding an election, a qualified elector (pursuant to § 500.2), or a person who is qualified to pre-register (pursuant to § 500.4), may appear in-person at the Board's office, and by extension, a voter registration agency (VRA), and do the following:

(a) Submit a voter registration application; or

(b) Submit a notice of a change of name, address, or party affiliation status.

510.2 On or after the thirtieth (30th) day preceding an election, a qualified elector may submit a voter registration application or a notice of change of name or address at the Board's office or a VRA. On or after the thirtieth (30th) day preceding a primary election, a qualified elector shall not change his or her party affiliation status. Requests for change of party affiliation status received during the thirty (30) days that precede a primary election shall be held and processed after the election. A change in party affiliation status occurs when a voter:

(a) Changes his or her party registration from one political party to another;

(b) Changes his or her party registration from "no party (independent)" to a political party; or

(c) Changes his or her party registration from a political party to "no party (independent)."

510.3 A qualified elector may appear in person at the Board's office to complete and sign the Board's official Voter Registration Application between the hours of 8:30 a.m. and 4:45 p.m., Monday through Friday. The Executive Director, or his or her designee, may expand the weekly hours, and may specify other days on which the Board may accept voter registration applications, based on the level of registration activity. Public notice of the expansion of weekly hours shall be provided at least twenty-four (24) hours in advance.

510.4 A voter registration application or a notice of a change of name, address, or party affiliation status that is submitted in-person at the Board's office or a VRA shall be considered to be received by the Board on the date that it is submitted at the Board's office or the voter registration agency.

Section 513 (Voter Registration Application Processing: At the Polls, Early Voting Centers, and During In-Person Absentee Voting) of Chapter 5 of Title 3 of the District of Columbia Municipal Regulations (DCMR) is amended in its entirety to read as follows:

513 VOTER REGISTRATION APPLICATION PROCESSING: AT THE POLLS, EARLY VOTING CENTERS, AND DURING IN-PERSON ABSENTEE VOTING

513.1 A qualified elector may register during the in-person absentee voting period specified in § 717 of this title, at an early voting center designated by the Board, or on Election Day by appearing in person at the polling place for the precinct in which the individual maintains residence, by completing the Board's official Voter Registration Application.

513.2 Valid proof of residence is any official document showing the voter's name and a District of Columbia home address. Acceptable forms of proof of residence include:

(a) A copy of a current and valid government-issued photo identification;

(b) A copy of a current utility bill, bank statement, government check, paycheck; or

(c) A government-issued document that shows the name and address of the voter; or

(d) Any other official document that shows the voter's name and District of Columbia residence address, including leases or residential rental agreements, occupancy statements from District homeless shelters, and tuition or housing bills from colleges or universities in the District.

513.3 Voters who fail to provide valid proof of residence during the in-person absentee voting period, at an early voting center, or on Election Day must provide such proof in order to complete registration.

513.4 Registered voters shall be permitted to submit notices of change of address or change of name during the in-person absentee voting period, at an early voting center, or at a polling place on Election Day.

513.5 A registered voter shall not change his or her party affiliation status during the in-person absentee voting period, at an early voting center, or at a polling place on Election Day during a primary election. Requests for change of party affiliation status received during the in-person absentee voting period, at an early voting center, or at a polling place on Election Day during a primary election shall be held and processed after the election. A change in party affiliation status occurs when a voter:

(a) Changes his or her party registration from one political party to another;

(b) Changes his or her party registration from "no party (independent)" to a political party; or

(c) Changes his or her party registration from a political party to "no party (independent)."

513.6 A voter registration application, or a notice of change of name, address, or party affiliation status, received pursuant to this section is considered to be received by the Board upon acknowledgement of receipt by the Board's date-stamp.

Section 514 (Notification of Acceptance of Registration or Change of Registration) of Chapter 5 of Title 3 of the District of Columbia Municipal Regulations (DCMR) is amended in its entirety to read as follows:

514 NOTIFICATION OF ACCEPTANCE OF REGISTRATION OR CHANGE OF REGISTRATION

514.1 Within nineteen (19) calendar days after the receipt of a voter registration application, the Registrar shall mail a non-forwardable voter registration notification to the applicant advising him or her of the acceptance or rejection of the registration application. If the application is rejected, the notification shall include the reason or reasons for the rejection and shall inform the voter of his or her right to either submit additional information as requested by the Board, or appeal the rejection pursuant to D.C. Official Code § 1-1001.07(f) (2011 Repl.).

514.2 In the event that the notification advising the applicant of acceptance of his or her voter registration is returned to the Board as undeliverable, the Registrar shall mail the notice provided in D.C. Official Code § 1-1001.07(j)(1)(B) (2011Repl.).

514.3 As soon as practicable after the election, the Board shall mail each registered voter who filed a change of address at the polls on Election Day a non-forwardable address confirmation notice to the address provided in the written affirmation on the Special Ballot Envelope. If the United States Postal Service returns the address confirmation notification as "undeliverable" or indicating that the registrant does not live at the address provided in the written affirmation on the Special Ballot Envelope, the Board shall notify the Attorney General of the District of Columbia.

Section 515 (Changes in Registration: Name) of Chapter 5 of Title 3 of the District of Columbia Municipal Regulations (DCMR) is amended in its entirety to read as follows:

515 CHANGES IN REGISTRATION: NAME

515.1 A registered voter shall notify the Board in writing of a name change due to marriage, divorce, or by order of a court within thirty (30) days of the applicable event.

515.2 The Board shall process name changes received pursuant to the monthly report furnished by the Superior Court of the District of Columbia in accordance with D.C. Official Code § 1-1001.07(k)(3) (2011 Repl.).

515.3 Prior to the thirtieth (30th) day preceding an election, a registered voter may give notice of change of name by:

(a) Completing a change of name on a voter registration application;

(b) Filing a change of name by signed letter or postal card which includes the following information;

(1) Former and current name;

(2) Address; and

(3) Date of birth;

(c) Filing a change of name through the DMV or a voter registration agency (VRA) pursuant to D.C. Official Code § 1-1001.07(d) (2011 Repl.); or

(d) Completing any other form prescribed for this purpose by the Board.

515.4 On or after the thirtieth (30th) day preceding an election, a registered voter may change his or her name in-person at the Board's office or a VRA. Requests for change of name other than those made in-person during the thirty (30) days that immediately precede and include the date of the election shall be held and processed after the election.

Section 516 (Changes in Registration: Address) of Chapter 5 of Title 3 of the District of Columbia Municipal Regulations (DCMR) is amended in its entirety to read as follows:

516 CHANGES IN REGISTRATION: ADDRESS

516.1 A registered voter who moves from the address at which he or she is registered to vote shall notify the Board, in writing, of the current residence address.

516.2 Prior to the thirtieth (30th) day preceding an election, a registered voter may give notice of change of address by:

(a) Mailing to the Board or filing in-person at the Board's office a completed voter registration application;

(b) Mailing to the Board a signed letter or postal card which includes the following information;

(1) The voter's name;

(2) Former and current address; and

(3) Date of birth;

(c) Completing and filing a voter registration application through the DMV or a voter registration agency (VRA) pursuant to D.C. Official Code § 1-1001.07(d) (2011 Repl.); or

(d) Completing any other form prescribed for this purpose by the Board.

516.3 On or after the thirtieth (30th) day preceding an election, a registered voter may change his or her address in-person at the Board's office, a VRA, an early voting center, or on Election Day at the polling place serving the current residence pursuant to D.C. Official Code § 1-1001.07(i)(4)(A) (2011 Repl.). Requests for change of address other than those made in-person during the thirty (30) days that immediately precede and include the date of the election shall be held and processed after the election.

Section 517 (Changes in Registration: Political Party) of Chapter 5 of Title 3 of the District of Columbia Municipal Regulations (DCMR) is amended in its entirety to read as follows:

517 CHANGES IN REGISTRATION: POLITICAL PARTY

517.1 Prior to the thirtieth (30th) day preceding a primary election, a registered voter may give notice of change of party affiliation status by:

(a) Completing a change of party affiliation status on a Voter Registration Application;

(b) Filing a change of party affiliation status by signed letter or postal card which includes the following information:

(1) The voter's name;

(2) Former and new party affiliation status;

(3) Address; and

(4) Date of birth;

(c) Filing a change of party affiliation status through the DMV or a voter registration agency pursuant to D.C. Official Code § 1-1001.07(d) (2006 Repl.); or

(d) Completing any other form prescribed for this purpose by the Board.

517.2 Requests for changes to a political party affiliation status considered received during the thirty (30) days that immediately precede and include the date of the primary election shall be held and processed after the election. The effective date for changes made pursuant to such requests shall be the day after the primary election.

517.3 A change in party affiliation status occurs when a voter:

(a) Changes his or her party registration from one political party to another;

(b) Changes his or her party registration from "No Party (Independent)" to a political party;

(c) Changes his or her party registration from a political party to "No Party (Independent)."

Chapter 6 of Title 3 of the District of Columbia Municipal Regulations (DCMR) is amended in its entirety to read as follows:

CHAPTER 6 CANDIDACY

600 GENERAL PROVISIONS
601 DECLARATION OF CANDIDACY
602 AFFIRMATION OF WRITE-IN CANDIDACY OF AN APPARENT WINNER
603 WITHDRAWAL OF CANDIDATES

600 GENERAL PROVISIONS

600.1 This chapter governs the process by which candidates for elected office declare and withdraw their candidacy and the process by which candidates are determined to be eligible to hold the particular office sought. Acceptance by the Board or the Office of Campaign Finance of reports and statements required to be filed by a candidate pursuant to D.C. Official Code §§ 1-1101.01 *et seq*. (2011 Repl.), shall not be construed as a determination by the Board that the candidate is eligible for the particular office which he or she seeks.

600.2 For purposes of this chapter, unless otherwise provided, the following term shall have the meaning ascribed:

(a) The term "candidate for nomination" means an individual who is seeking to win a party primary or is seeking ballot access in a general or special election by having registered voters sign a nominating petition to have his or her name printed directly on the ballot;

(b) The term "candidate for election" means an individual who has won a party primary or survived the challenge period (D.C. Official Code § 1-1001.08(o) (2011 Repl.)) after filing a petition to have his or her name printed directly on the general election ballot;

(c) The term "write-in nominee" means an individual whose name is written on the ballot by a voter in a primary, general, or special election and whose eligibility as a candidate in the election has not been determined by the Executive Director or his or her designee;

(d) The term "write-in candidate" means an individual who has been nominated by at least one write-in vote and who has perfected his or her candidacy by filing an Affirmation of Write-In Candidacy form with the Board prior to the statutory deadline; and

(e) The term "eligible," when used with the term "candidate," includes an individual who is not ineligible to be a candidate pursuant to D.C. Official Code § 1-1001.15(b) (2011 Repl.), and who meets or is capable of meeting those statutory requirements necessary to serve in the particular office sought.

(f) The term "elected office" means any of the following elected party, District, or federal offices:

(i) National committeemen and national committeewomen of political parties, and alternates, when the party has requested the inclusion of these offices at a regularly scheduled primary election in a presidential election year;

(ii) Delegates to conventions and conferences of political parties, and alternates, when the party has requested the inclusion of these offices at a regularly scheduled primary election in a presidential election year;

(iii) Members and officials of local committees of political parties when the party has requested the inclusion of these offices at a regularly scheduled primary election in a presidential election year;

(iv) Electors of President and Vice President of the United States;

(v) Delegate to the House of Representatives;

(vi) Members of the State Board of Education;

(vii) Members of the Council of the District of Columbia, including Chairman;

(viii) Attorney General for the District of Columbia;

(ix) Mayor of the District of Columbia;

(x) United States Senator;

(xi) United States Representative; and

(xii) Advisory Neighborhood Commissioner.

601 DECLARATION OF CANDIDACY

601.1 Each candidate for nomination to elected office shall declare his or her candidacy on an affidavit form prescribed by the Board (after this, "Declaration of Candidacy").

601.2 The Declaration of Candidacy filed by the candidate shall contain the following information:

(a) The name, and address of the candidate;

(b) The office that the candidate seeks;

(c) The date of the election;

(d) The ward or Advisory Neighborhood Commission Single-Member District from which the candidate seeks election, where applicable;

(e) The candidate's party affiliation, where applicable;

(f) The candidate's residence addresses for the applicable period to determine eligibility;

(g) The candidate's designation of how he or she would like his or her name to be listed on the ballot;

(h) A statement that the candidate meets the qualifications for holding the office sought; and

(i) A notice of the penalties for making false representations as to one's qualifications for holding elective office.

601.3 Each candidate shall swear or affirm upon oath before a District notary or Board official that the information provided in the Declaration of Candidacy is true to the best of the candidate's knowledge and belief.

601.4 The Declaration of Candidacy shall also contain sufficient space for the candidate to print his or her email address and phone number. By providing an email address, the candidate consents to receiving official communication by email at the address provided.

601.5 The deadline for filing the Declaration of Candidacy shall be the same date as the deadline for filing nominating petitions for the particular office sought, except that in the event the nomination of candidates for election to the office of presidential elector is made by message to the Board pursuant to D.C. Official Code § 1-1001.08(d) (2011 Repl.), the deadline for filing the Declaration of Candidacy shall be the same date as the deadline for making nominations by message.

601.6 Within three (3) business days after the deadline for filing the Declaration of Candidacy for any office, the Executive Director or his or her designee shall issue a preliminary determination as to the eligibility of the declarant to be candidate for the particular office sought.

601.7 Notice of the Executive Director's preliminary determination shall be served immediately by email or first-class mail upon each declarant and upon the chairperson of any political committee(s) registered as supporting that individual's candidacy.

601.8 The preliminary determination of eligibility shall be based solely upon information contained in the Declaration of Candidacy and upon information contained in other public records and documents as may be maintained by the Board. The criteria used for determining eligibility to be a candidate shall be limited to the appropriate statutory qualifications for the particular office sought.

601.9 The preliminary determination of eligibility shall in no way be deemed to preclude further inquiry into or challenge to the eligibility of an individual for candidacy or office made prior to the certification of election results. The Executive Director or his or her designee may reverse a preliminary determination of eligibility based upon evidence which was not known to the Executive Director at the time of the preliminary determination or upon evidence of changed circumstances.

601.10 In the event that the Executive Director determines that an individual is ineligible to be a candidate for the particular office sought, the individual's nominating petition shall nevertheless be posted for the challenge period specified in D.C. Official Code § 1-1001.08(o) (2011 Repl.), along with the Executive Director's preliminary determination.

601.11 Within three (3) days of receipt of notice of an adverse determination of eligibility, a declarant aggrieved by the decision may file a written notice of appeal with the Board, duly signed by the declarant and specifying concisely the grounds for appeal.

601.12 The Board shall hold a hearing on the appeal within three (3) days after receipt of the appeal notice.

601.13 The hearing shall be conducted in accordance with the procedures provided in the District of Columbia Administrative Procedure Act, D.C. Official Code §§ 2-501 *et seq*. (2011 Repl.), and may be heard by a one-member panel (D.C. Official Code § 1-1001.05(g) (2011 Repl.)).

601.14 Any appeal from a decision of a one-member panel to the full Board shall be taken in the manner prescribed by D.C. Official Code § 1-1001.05(g) (2011 Repl.); however, in no case shall the time allowed for the appeal exceed fourteen (14) calendar days from the date of decision of the one-member panel.

602 AFFIRMATION OF WRITE-IN CANDIDACY OF AN APPARENT WINNER

602.1 In the case of a primary election, a write-in nominee who is an apparent winner and wishes to perfect his or her candidacy shall file with the Board an Affirmation of Write-in Candidacy on a form provided by the Board not later than 4:45 p.m. on the third (3rd) day immediately following the election.

602.2 In the case of a general or special election, a write-in nominee who is an apparent winner and wishes to perfect his or her candidacy shall file with the Board an Affirmation of Write-in Candidacy on a form provided by the Board not later than 4:45 p.m. on the seventh (7th) day immediately following the election.

602.3 Nothing in this section shall prohibit an individual seeking to declare write-in candidacy from filing an Affirmation of Write-in Candidacy prior to write-in nomination, provided that the determination of the write-in candidate's eligibility shall proceed in accordance with this chapter. Write-in nominees who fail to submit the documents required by this section within the prescribed times shall be deemed to be ineligible candidates.

602.4 The Affirmation of Write-in Candidacy form shall contain the same information required for the Declaration of Candidacy described in this chapter.

602.5 Each write-in candidate shall swear or affirm upon oath before a District of Columbia notary or Board official that the information provided in the Affirmation of Write-in Candidacy is true to the best of his or her knowledge and belief.

602.6 If a write-in nominee is an apparent winner of an election contest, the Executive Director or his or her designee shall issue a preliminary determination as to the eligibility of the write-in nominee if such nominee has perfected his or her candidacy prior to the prescribed deadline. No eligibility determination shall be made for affirmants who are not apparent winners.

602.7 Notice of the determination shall be served immediately by mail upon any affirmant found to be ineligible.

602.8 The determination of eligibility shall be based solely upon information contained in the Affirmation of Write-In Candidacy and upon information contained in other public records and documents as may be maintained by the Board. The criteria used for determining eligibility to be a candidate shall be limited to the appropriate statutory qualifications for the particular office sought.

602.9 The determination shall in no way be deemed to preclude further inquiry into or challenge to such individual's eligibility for candidacy or office made prior to the certification of election results by the Board and based upon information which is not known to the Board at the time of the preliminary determination, or upon evidence of changed circumstances.

602.10 If a write-in winner is declared ineligible after the election, no winner shall be declared.

603 WITHDRAWAL OF CANDIDATES

603.1 Except as provided in this section, a candidate shall withdraw his or her candidacy by executing and filing with the Board a notarized affidavit which states that the candidate irrevocably withdraws the candidacy for the office to which he or she has been nominated or is seeking nomination. The withdrawal shall be irrevocable only for the office sought and for the election at issue,

603.2 In the case of a presidential candidate who publically withdraws during a primary election and no affidavit of withdrawal is received from the candidates for delegate in support of that presidential candidate, the Board may remove the names of such candidates from the ballot.

603.3 The Executive Director or his or her designee shall provide public notice of all withdrawals.

603.4 The affidavit of withdrawal shall be filed with the Board no later than 5 p.m. on the 54th day before Election Day. If a candidate withdraws after the 54th day before Election Day, his or her name may still appear on the official ballot or separate handout (in the case of a presidential preference primary, pursuant to party rule). In this case, notice of the candidate's withdrawal shall also be posted in the early voting centers and the affected polling places.

Section 700 (Ballot Form and Content) of Chapter 7 (Election Procedures) of Title 3 of the District of Columbia Municipal Regulations (DCMR) is repealed.

Section 701 (Fictitious and Sample Ballots) of Chapter 7 (Election Procedures) of Title 3 of the District of Columbia Municipal Regulations (DCMR) is repealed.

Section 702 (Candidates Names on Ballots) of Chapter 7 (Election Procedures) of Title 3 of the District of Columbia Municipal Regulations (DCMR) is repealed.

Section 706 (Poll Watchers and Election Observers) of Chapter 7 (Election Procedures) of Title 3 of the District of Columbia Municipal Regulations (DCMR) is amended in its entirety to read as follows:

706 POLL WATCHERS AND ELECTION OBSERVERS

706.1 Each candidate and each proponent or opponent of a proposed ballot measure may petition the Board for credentials authorizing poll watchers at any early voting centers, polling places and/or ballot counting places.

706.2 Persons who wish to witness the administration of elections, including nonpartisan or bipartisan, domestic or international organizations, who are not affiliated with a candidate or ballot measure may petition the Board for credentials authorizing election observers at any early voting center, polling place, and/or ballot counting place.

706.3 Each petition shall be filed with the Board, not less than two (2) weeks before each election and shall be on a form furnished by the Board. Less than two (2) weeks before each election, the Board reserves the right to accept additional petitions based upon available space.

706.4 At the time of filing, the poll watcher petition form shall contain the following information:

(a) The name, address, telephone number, and signature of the candidate or ballot measure proponent or opponent ("applicant");

(b) The office for which the applicant is a candidate or the short title of the measure which the applicant supports or opposes;

(b) The name, address, and telephone number of the poll watcher supervisor, if a person is designated by the candidate, proponent, or opponent;

(c) The locations where access credentials are sought;

(d) The names, addresses and telephone numbers of at least two (2) and not more than three (3) persons who are authorized to collect the poll watcher badges from the Board on behalf of the candidate or ballot measure proponent or opponent for distribution to the authorized poll watchers; and

(e) A certificate from the applicant that each poll watcher selected shall conform to the regulations of the Board with respect to poll watchers and the conduct of the election.

706.5 At the time of filing, the election observer petition form shall contain the following:

(a) The name, address, and telephone number of the organization or individual seeking credentials;

(b) The name, address, and telephone number of the election observer supervisor, if a person is designated by an organization;

(c) The names, addresses, and telephone numbers of all observers who will be receiving badges;

(d) The locations where access credentials are sought;

(e) The names, addresses, and telephone numbers of at least one (1) and not more than three (3) persons who are authorized to collect the election observer badges from the Board on behalf of the organization or individual seeking credentials for distribution to the authorized election observers; and

(f) A certificate from the applicant that each election observer selected shall conform to the regulations of the Board with respect to election observers and the conduct of the election.

706.6 The Board may limit the number of poll watchers or election observers to ensure that the conduct of the election will not be obstructed or disrupted, except that:

(a) Each qualified candidate shall be entitled to one (1) poll watcher in each of the precincts where his or her name appears on the ballot.

(b) Each proponent or opponent of a ballot measure who has timely filed a verified statement of contributions with the Office of Campaign Finance shall be entitled to one (1) poll watcher in each precinct where the ballot measure appears on the ballot.

706.7 The Executive Director shall make a ruling on poll watcher and election observer petitions not less than ten (10) days prior to an election.

706.8 In making a determination of the number of watchers or observers allowed, the Executive Director shall consider the following:

(a) The number of candidates or requesting organizations;

(b) Whether the candidates are running as a slate;

(c) The number of proponents and opponents of measures and proposed Charter amendments;

(d) The physical limitations of the polling places and counting place; and

(e) Any other relevant factors.

706.9 Within twenty-four (24) hours of a denial, the Executive Director shall issue a public notice with respect to any denial of a petition for credentials.

706.10 If a place cannot accommodate all those seeking credentials, the Board may grant preference to poll watchers over election observers, and organizations over individuals.

706.11 The Board shall issue a badge for each authorized poll watcher or election observer, with space for the watcher's or observer's name and the name of the candidate or party represented by the watcher, or any organization being represented by the observer. Badges shall also be issued for each authorized watcher representing the proponents or opponents of ballot measures.

706.12 Badges shall be numbered consecutively, and consecutive numbers issued to each candidate, organization, proponent, or opponent.

706.13 All badges shall be worn by the authorized poll watcher or election observer in plain view at all times when on duty at the polling place or counting place.

706.14 An authorized alternate poll watcher or election observer may, in the discretion of the watcher or observer supervisor, be substituted for a watcher or observer at any time; provided, that notice is first given to the designated representative of the Board at the polling place or counting place.

706.15 A poll watcher shall be allowed to perform the following acts:

(a) Observe the count;

(b) Unofficially ascertain the identity of persons who have voted;

(c) Report alleged discrepancies to the Precinct Captain; and

(d) Challenge voters in accordance with the procedures specified in this chapter, if the watcher is a registered qualified elector.

706.16 An election observer shall be allowed to perform the following acts:

(a) Observe the count;

(b) Unofficially ascertain the identity of persons who have voted; and

(c) Report alleged discrepancies to the Precinct Captain.

706.17 No poll watcher or election observer shall, at any time, do any of the following:

(a) Touch any official record, ballot, voting equipment, or counting form;

(b) Interfere with the progress of the voting or counting;

(c) Assist a voter with the act of voting;

(d) Talk to any voter while the voter is in the process of voting, or to any counter while the count is underway; provided, that a watcher or observer may request that a ballot be referred for ruling on its validity to a representative of the Board;

(e) In any way obstruct the election process; or

(f) Use any video or still cameras inside the polling place while the polls are open for voting, or use any video or still camera inside the counting center if such use is disruptive or interferes with the administration of the counting process

706.18 A candidate may not serve as a poll watcher in any early voting center or polling place.

706.19 If a poll watcher or election observer has any question, or claims any discrepancy or error in the voting or the counting of the vote, the watcher or observer shall direct the question or complaint to the election official in charge. In each polling place, the Precinct Captain shall be the representative of the Board to whom the poll watchers or election observers shall direct all questions and comments. In counting places, the Executive Director shall identify those representatives to

whom poll watchers and election observers shall direct all questions and comments.

706.20 Any poll watcher or election observer who, in the judgment of the Board or its designated representative, has failed to comply with any of the rules contained in this section, or has engaged in some other prohibited activity or misconduct, may be requested to leave the polling place or the counting center.

706.21 If a poll watcher or election observer is requested to leave, that watcher's or observer's authorization to use credentials shall be cancelled, and he or she shall leave the polling place or counting place forthwith.

706.22 An authorized alternate poll watcher or election observer may be substituted for a watcher or observer who has been removed.

Section 707 (Polling Place Officials Liaison with Poll Watchers and Election Observers) of Chapter 7 (Election Procedures) of Title 3 of the District of Columbia Municipal Regulations (DCMR) is repealed.

Section 709 (Control of Activity at Early Voting Centers, Polling Places, and Ballot Counting Places) of Chapter 7 (Election Procedures) of Title 3 of the District of Columbia Municipal Regulations (DCMR) is amended in its entirety to read as follows:

709 CONTROL OF ACTIVITY AT EARLY VOTING CENTERS, POLLING PLACES, AND BALLOT COUNTING PLACES

709.1 The Precinct Captain shall have full authority to maintain order, pursuant to the Election Act, the regulations contained in this section, and directives of the Executive Director, General Counsel and their designees, including full authority to request police officials to enforce lawful orders of the Precinct Captain.

709.2 The only persons who shall be permitted to be present in early voting centers, polling places, or ballot counting places are the following:

(a) Designated representatives of the Board;

(b) Police officers;

(c) Duly qualified poll watchers and election observers;

(d) Persons actually engaged in voting; and

(e) Other persons authorized by the Board.

709.3 The only activity which shall be permitted in the portion of any building used as an early voting center, polling place, or ballot counting place shall be the conduct of the election. No partisan or nonpartisan political activity, or any other activity

which, in the judgment of the Precinct Captain, may directly or indirectly interfere with the orderly conduct of the election, shall be permitted in, on, or within a reasonable distance outside the building used as an early voting center, polling place, or ballot counting place.

709.4 For the purposes of this section, the term "political activity" shall include, without limitation, any activity intended to persuade a person to vote for or against any candidate or measure or to desist from voting.

709.5 The distance deemed "reasonable" shall be approximately fifty feet (50 ft.) from any door used to enter the building for voting. The exact distance shall be determined by the Precinct Captain, depending on the physical features of the building and surrounding area. Wherever possible, the limits shall be indicated by a chalk line, or by some other physical marker at the polling place.

709.6 A person shall be warned to cease and desist his or her conduct upon any instance of the following:

(a) Violation of the Election Act or regulations contained in this section;

(b) Failure to obey any reasonable order of the Board or its representative(s); or

(c) Acting in a disorderly manner in, or within a reasonable distance outside the building used as an early voting center, polling place, or ballot counting place.

709.7 If the person committing the violation(s) fails to cease and desist, a member of the Metropolitan Police Department of the District of Columbia shall be requested to evict the person or take other appropriate action.

Chapter 10 of Title 3 of the District of Columbia Municipal Regulations (DCMR) is amended in its entirety to read as follows:

CHAPTER 10 INITIATIVE AND REFERENDUM

1000 GENERAL PROVISIONS
1001 ADOPTION OF BALLOT LANGUAGE
1002 PETITION FORM
1003 SIGNATURE REQUIREMENTS
1004 NON-RESIDENT CIRCULATORS
1005 FILING PETITIONS
1006 PETITION CHALLENGES
1007 VALIDITY OF SIGNATURES
1008 WATCHERS

1009 PETITION CERTIFICATION
1010 DATE OF ELECTION
1011 RETENTION OF RECORDS
1012 PROPOSER SUBSTITUTION

1000 GENERAL PROVISIONS

1000.1 This chapter governs the process by which registered qualified elector(s) of the District of Columbia may present initiative or referendum measures to the electorate for their approval or disapproval.

1000.2 For purposes of this chapter, unless otherwise provided, the following terms shall be defined as follows:

(a) The term "Home Rule Act" means the "District of Columbia Self Government and Governmental Reorganization Act", Public Law 93-198 (codified at D.C. Official Code § 1-201.01 *et seq*.), and any subsequent amendments.

(b) The term "qualified petition circulator" means any individual who is:

(i) At least 18 years of age; and

(ii) Either a resident of the District of Columbia, or a resident of another jurisdiction who has registered as a petition circulator with the Board in accordance with this chapter.

(c) The term "initiative" means the process by which the electors of the District of Columbia may propose laws (except laws appropriating funds) and present such proposed laws directly to the registered qualified electors of the District of Columbia for their approval or disapproval.

(d) The term "referendum" means the process by which the registered qualified electors of the District of Columbia may suspend acts of the Council of the District of Columbia (except emergency acts, acts levying taxes, or acts appropriating funds for the general operation budget) until such acts have been presented to the registered qualified electors of the District of Columbia for their approval or rejection, provided that the Chairman of the Council has transmitted the Act to the Speaker of the House of Representatives, and the President of the Senate, under D.C. Official Code § 1-206.02(c)(1) (2006 Repl.).

1000.3 In order to commence the initiative or referendum process, a registered qualified elector(s) shall file the following documents in-person at the Board's office:

(a) Five (5) printed or typewritten copies of the full text of the initiative or referendum measure;

(b) A summary statement of the measure not exceeding one hundred (100) words in length;

(c) A short title of the measure to be proposed by initiative or of the act or part of the act to be referred; and

(d) An affidavit under oath containing the name, telephone number, and residence address of the proposer, and a statement that the proposer is a registered qualified elector of the District of Columbia; and

(e) A copy of the statement of organization and report(s) of receipts and expenditures filed with the Office of Campaign Finance.

1000.4 The General Counsel shall provide notice in the *D.C. Register* of the measure's receipt and the Board's intent to review the measure at a public hearing to determine whether it presents a proper subject for initiative or referendum, whichever is applicable ("Notice of Public Hearing: Receipt and Intent to Review").

1000.5 A measure does not present a proper subject for initiative or referendum, and must be refused by the Board, if:

(a) The measure presented would violate the Home Rule Act;

(b) The measure presented seeks to amend the Home Rule Act;

(c) The measure presented would appropriate funds;

(d) The measure presented would violate the U.S. Constitution;

(e) The statement of organization and the report(s) of receipts and expenditures have not been filed with the Office of Campaign Finance;

(f) The form of the measure does not include legislative text, a short title, or a summary statement containing no more than one hundred (100) words;

(g) The measure authorizes or would have the effect of authorizing discrimination prohibited under the Human Rights Act of 1977 or any subsequent amendments; or

(h) The measure would negate or limit an act of the Council enacted pursuant to § 446 of the Home Rule Act.

1000.6 Within ten (10) days after the refusal, the proposer(s) of a rejected initiative or referendum measure may petition the Superior Court of the District of Columbia for a writ in the nature of mandamus to compel the Board to accept the measure. The Board shall retain the submitted petition pending appeal.

1000.7 If the Board determines that the initiative or referendum measure presents a proper subject, or if the Superior Court of the District of Columbia grants a writ in the nature of mandamus compelling the Board to accept the measure, the Board shall accept the initiative or referendum measure as a proper subject matter and shall assign a serial number to the measure.

1000.8 The first initiative measure shall be numbered one (1) in numerals. Succeeding measures shall be numbered consecutively 2, 3, 4, and so on ad infinitum.

1000.9 The first referendum measure shall be numbered 001 in numerals. Succeeding measures shall be numbered 002, 003, 004, and so on ad infinitum.

1000.10 Once assigned a serial number, an initiative or referendum measure shall be known and designated on all petitions, election ballots, and proceedings as "Initiative Measure No. " or "Referendum Measure No. ."

1001 ADOPTION OF BALLOT LANGUAGE

1001.1 Within twenty (20) calendar days of the date on which the Board accepts the initiative or referendum measure, the Board shall prepare and formally adopt the following at a public meeting:

(a) An abbreviated and impartial summary statement not exceeding one hundred (100) words in length expressing the chief purpose of the proposed measure;

(b) A short title for the measure not exceeding fifteen (15) words in length by which it will be readily identifiable and distinguishable from other measures which may appear on the ballot; and

(c) The proper legislative form of the initiative or referendum measure, where applicable, similar to the form of an act that has completed the course of the legislative process within the District of Columbia government before transmittal to Congress.

1001.2 For the purposes of this section, the following rules shall apply to the counting of words in the summary statement and short title:

(a) Punctuation is not counted;

(b) Each word shall be counted as one (1) word except as specified in this subsection;

(c) All geographical names shall be considered as one (1) word; for example, "District of Columbia" shall be counted as one (1) word;

(d) Each abbreviation for a word, phrase, or expression shall be counted as one (1) word;

(e) Hyphenated words that appear in any generally available dictionary shall be considered as one (1) word. Each part of all other hyphenated words shall be counted as a separate word;

(f) Dates consisting of a combination of words and digits shall be counted as two (2) words. Dates consisting only of a combination of digits shall be counted as one (1) word; and

(g) Any number consisting of a digit or digits shall be considered as one (1) word. Any number which is spelled, such as "one," shall be considered as a separate word or words. "One" shall be counted as one (1) word whereas "one hundred" shall be counted as two (2) words. The number one hundred "100," shall be counted as one (1) word.

1001.3 Within five (5) days of formally adopting the summary statement, short title, and legislative text, the Board shall do the following:

(a) Notify the proposer of the measure of the adopted language by certified mail; and

(b) Submit the adopted language to the *D.C. Register* for publication.

1001.4 Within ten (10) days from the date of its publication in the *D.C. Register*, any registered qualified elector who objects to the adopted language formulated by the Board may petition the Superior Court of the District of Columbia for review. If no review in the Superior Court is sought, the adopted language shall be considered to be certified at the expiration of the ten (10) day period for review.

1001.5 The certified short title shall be the title of the measure furnished with the petition, the title printed on the ballot, and the title used in any other proceedings relating to the measure.

1002 PETITION FORM

1002.1 The Board shall prepare and provide to the proposer at a public meeting an original petition form which the proposer shall reproduce at his or her own expense for use in circulating the petition. Each reproduced petition sheet shall be printed in its entirety on white paper of good writing quality of the same size as the original petition form prepared by the Board and shall be double-sided.

1002.2 The original petition form prepared by the Board shall contain the following:

(a) Numbered lines for twenty (20) names, designed so that each signer may personally affix the date signed and his or her signature, printed name, residence address (giving street and number) and election ward;

(b) A statement requesting that the Board hold an election on the initiative or referendum measure contained in the petition, stating the measure's serial number and short title;

(c) The text of the official summary and short title of the measure printed on the front of the petition sheet;

(d) A warning statement declaring that only duly registered qualified electors of the District of Columbia may sign the petition;

(e) Instructions advising signatories of the proper method of signing the petition as follows: EVERY PETITIONER MUST SIGN HIS OR HER OWN NAME. UNDER NO CIRCUMSTANCES IS ANY PERSON PERMITTED TO SIGN ANOTHER PERSON'S NAME OR SIGN MORE THAN ONCE. PRINT YOUR NAME AND RESIDENCE ADDRESS IN FULL; and

(f) The words "PAID FOR BY" followed by the name and address of the payer or the committee or other person, and its treasurer on whose behalf the material appears, in the right hand corner of the front page.

1002.3 The second page of each petition form shall include a circulator's affidavit, providing space for the circulator of a petition to record his or her name and address and the dates between which the signatures on the sheet were obtained. By signing the affidavit, the circulator swears or affirms under oath that:

(a) He or she is a qualified petition circulator;

(b) He or she was in the presence of each person who signed the petition at the time the petition was signed;

(c) According to the best information available to the circulator, each signature is the genuine signature of the person whose name it purports to be.

1002.4 No petition sheets may be circulated prior to the Board's provision of the original petition form.

1003 SIGNATURE REQUIREMENTS

1003.1 An initiative or referendum petition shall be signed by registered voters equal in number to five percent (5%) of the registered qualified electors of the District of Columbia, provided that the total signatures submitted include five percent (5%) of the registered qualified electors in each of five (5) or more of the eight (8) election wards.

1003.2 The number of registered qualified electors used for computing the signature requirements shall be based upon the latest official count of registered qualified electors made by the Board that was issued at least thirty (30) days prior to submission of the signatures for the particular initiative or referendum petition.

1004 NON-RESIDENT CIRCULATORS

1004.1 Each petition circulator who is not a resident of the District of Columbia shall, prior to circulating a petition, complete and file in-person at the Board's office a Non-Resident Petition Circulator Registration Form in which he or she:

(a) Provides the name of the measure in support of which he or she will circulate the petition;

(b) Provides his or her name, residential address, telephone number, and email address;

(c) Swears or affirms that he or she is at least eighteen (18) years of age;

(d) Acknowledges that he or she has received from the Board information regarding the rules and regulations governing the applicable petition circulation process, and that he or she will adhere to such rules and regulations;

(e) Consents to submit to the Board's subpoena power and to the jurisdiction of the Superior Court of the District of Columbia for the enforcement of Board subpoenas.

1004.2 Each non-resident petition circulator shall present proof of residence to the Board at the time he or she files the Non-Resident Petition Circulator Registration Form.

Valid proof of residence is any official document showing the circulator's name and residence address. Acceptable forms of proof of residence include:

(a) A copy of a current and valid government-issued photo identification;

(b) A copy of a current utility bill, bank statement, government check, paycheck;

(c) A copy of a government-issued document; or

(d) A copy of any other official document, including leases or residential rental agreements, occupancy statements from homeless shelters, or tuition or housing bills from colleges or universities.

1005 FILING PETITIONS

1005.1 An initiative petition must be submitted for filing no later than 5:00 p.m. on the one hundred and eightieth (180th) calendar day following the date upon which the Board provided the original petition form. A referendum petition shall be submitted for filing no later than 5:00 p.m. on the last business day before the act, or any part of the act, which is the subject of the referendum has become law. A petition that is not timely submitted shall not be accepted for filing.

1005.2 All timely submitted petitions shall be received by the Executive Director or his or her designee. When a petition is offered for filing, the Executive Director shall:

(a) Count the petition pages and issue a receipt for the total number of petition pages submitted;

(b) Shall serially number the pages and obliterate any blank lines appearing on each petition page; and

(c) Prepare an initial total count, broken down by ward, of the signatures submitted.

1005.3 A signature shall not be accepted, and shall not be included in the Executive Director's initial total count, if it:

(a) Appears on a page that is not a reproduction of the form provided by the Board;

(b) Appears on a page which does not have a completed circulator affidavit;

(c) Was collected by someone who is not a qualified petition circulator; and

(d) Is the signature of a registered voter who submitted a notarized request to disallow his or her signature from being counted on the petition, provided that the request was received prior to the time the petition is filed.

1005.4 If the initial total count indicates that a petition contains at least five percent (5%) of registered qualified electors in the District, the Executive Director shall accept the petition, post the petition for public inspection and challenge, and proceed with registration verification of petition signers in accordance with the rules of this chapter. If the petition does not contain at least five percent (5%) of registered qualified electors in the District, the Executive Director shall refuse to accept the petition and shall notify the proposer(s) in writing of the refusal.

1005.5 If the accepted petition is for a referendum, the Executive Director shall request that the custodian of the act return it to the Chairman of the Council of the District of Columbia.

1005.6 Within ten (10) days after a refusal, the proposer(s) of a rejected initiative or referendum petition may petition the Superior Court of the District of Columbia for a writ in the nature of mandamus to compel the Board to accept the petition. The Board shall retain the submitted petition pending appeal.

1006 PETITION CHALLENGES

1006.1 The Executive Director or his or her designee shall post all timely submitted petitions, or facsimiles thereof, in the Board's office for public inspection and opportunity for challenge for ten (10) days, including Saturdays, Sundays, and holidays, beginning on the third (3rd) calendar day after the petitions are filed.

1006.2 Except as provided in this section, the Board shall adjudicate the validity of each properly filed challenge in accordance with the procedures prescribed in chapter 4 of this title. A challenge is properly filed if it:

(a) Cites the alleged signature or circulator requirement defects, as set forth in the signature validity rules of this chapter, by line and page;

(b) Is signed and submitted in-person at the Board's office by a qualified elector within the ten (10)-day posting period; and

(c) Alleges the minimum number of signature defects which, if valid, would render the proposed measure ineligible for ballot access.

1006.3 Within three (3) working days of receipt of a properly filed challenge, the General Counsel or his or her designee shall serve a copy of the challenge upon the proposer, by first-class mail, or email.

1006.4 After receipt of a properly filed challenge, the Board's staff shall search the Board's registration records to prepare a recommendation to the Board as to the validity of the challenge.

1006.5 The Board shall receive evidence in support of and in opposition to the challenge and shall rule on the validity of the challenge no more than twenty (20) days after the challenge has been filed. The Board shall consider any other evidence as may be submitted, including but not limited to, documentary evidence, affidavits, and oral testimony.

1006.6 The Board, in view of the fact that it shall hear and determine the validity of the challenge within a limited time, may limit examination and cross-examination of witnesses to the following:

(a) Objections and specifications of such objections, if any, to the petition; and

(b) Objections and specifications of such objections, if any, to the petition challenge.

1006.7 Based upon the evidence received, the Board shall either reject or uphold the challenge, and accordingly grant or deny ballot access to the proposed measure whose petition was challenged.

1006.8 If a one (1)-member Board panel makes a determination on the validity of a challenge, either the challenger or the proposer may apply to either the full Board or the District of Columbia Court of Appeals for a review of such determination within three (3) days after the announcement of the one (1)-member panel determination; provided that any appeal to the full Board must be made in time to permit the Board to resolve the matter by no later than twenty (20) days after the challenge has been filed. An appeal from a full Board determination to the Court of Appeals shall be made within three (3) days.

1007 VALIDITY OF SIGNATURES

1007.1 A petition signature shall not be counted as valid in any of the following circumstances:

(a) The signer's voter registration was designated as inactive on the voter roll at the time the petition was signed;

(b) The signer, according to the Board's records, is not registered to vote at the address listed on the petition at the time the petition was

signed and has failed to file a change of address form that is received by the Board on or before the date that the petition is filed;

(c) The signature is a duplicate of a valid signature;

(d) The signature is not dated;

(e) The petition does not include the address of the signer;

(f) The petition does not include the name of the signer where the signature is not sufficiently legible for identification;

(g) The circulator of the petition sheet was not a qualified petition circulator at the time the petition was signed;

(h) The circulator of the petition failed to complete all required information in the circulator's affidavit;

(i) The signature is not made by the person whose signature it purports to be, provided that registered voters who are unable to sign their names may make their marks in the space for signature. These marks shall not be counted as valid signatures unless the persons witnessing the marks shall attach to the petition affidavits that they explained the contents of the petitions to the signatories and witnessed their marks;

(j) The signer was also the circulator of the same petition sheet where the signature appears.

(k) The signature was obtained outside of the presence of the circulator; or

(l) The signature was obtained on a petition sheet that was submitted on behalf of a previously filed petition that was rejected or found to be numerically insufficient.

1008 WATCHERS

1008.1 Two (2) persons representing the proposer(s) and two (2) persons representing any political committee or committees registered with the Office of Campaign Finance and organized in opposition to a proposed initiative or referendum measure may be present during the counting and validation procedures and shall be deemed watchers.

1008.2 To secure the presence of watchers, the proposer, or any committee registered in opposition, shall file a petition for credentials for watchers, within three (3) days from the date the initiative or referendum petition is submitted for filing.

1008.3 Each petition for credentials shall be on a form furnished by the Board and shall contain the following:

(a) The name, address, telephone number, and signature of the proposer(s) or the committee(s), together with the title of the proposed measure and its serial number;

(b) The names, addresses, and telephone numbers of the persons authorized to represent the proposer(s) or the committee(s) and receive the badges from the Board; and

(c) A certificate that each proposed watcher shall conform to the regulations of the Board concerning watchers and the conduct of the counting and validation process.

1008.4 The Board shall issue a badge for each authorized watcher, with space for the watcher’s name, the serial number of the measure, and the name of the proposer(s) or political committee(s) represented by the watcher.

1008.5 Badges shall be worn by the authorized watcher at all times when observing the counting and validation process.

1008.6 An authorized alternate watcher may, in the discretion of the proposer(s) or the political committee(s), be substituted for a watcher at any time during the counting and validation process; provided, that notice is first given to the designated representative of the Board who is present.

1008.7 No watcher shall at any time during the counting and validation process do the following:

(a) Touch any official record of the Board; or

(b) Interfere with the progress of the counting and validation process or obstruct in any way the process.

1008.8 If a watcher has any questions or claims any discrepancy, inaccuracy, or error in the conduct of the procedures, he or she shall direct his or her question or complaint to the Board designee in charge.

1008.9 Any watcher who, in the judgment of the Board or its designated representative, has failed to comply with any of the rules in this section may be requested to leave the area where the verification process is being conducted, and the

watcher's credentials shall be deemed canceled. An authorized alternate watcher may be substituted.

1009 PETITION CERTIFICATION

1009.1 Within thirty (30) calendar days after the acceptance of an initiative or referendum petition for filing, the Board shall determine whether the petition contains the number of valid signatures necessary, in terms of percentage and ward distribution requirements, to be certified for ballot access.

1009.2 Upon the acceptance of a petition, the Executive Director or his or her designee shall:

(a) Verify the registration of each petition signer; and

(b) Determine the number of signatures of verified registrants.

1009.3 The signatures of the verified registrants shall comprise the universe of signatures from which a random sample will be drawn for purposes of verifying the signatures' authenticity ("random sample universe").

1009.4 A signature will not be counted and included in the random sample universe if:

(a) The signer's voter registration was designated as inactive on the voter roll at the time the petition was signed;

(b) The signer, according to the Board's records, is not registered to vote at the address listed on the petition at the time the petition was signed, except that, if the Board's records indicate that the voter filed a change of address after the date on which the petition was signed but that was received on or before the petition was submitted, the signature shall be included in the random sample universe;

(c) The signature is a duplicate of a valid signature;

(d) The signature is not dated;

(e) The petition does not include the printed or typed address of the signer;

(f) The petition does not include the printed or typed name of the signer where the signature is not sufficiently legible for identification;

(g) The circulator of the petition sheet was not a qualified petition circulator at the time the petition was signed;

(h) The circulator of the petition failed to complete all required information in the circulator's affidavit;

(i) The signer was also the circulator of the same petition sheet where the signature appears; or

(j) The signature was obtained on a petition sheet that was submitted on behalf of a previously filed initiative or referendum petition that was rejected or found to be numerically insufficient.

1009.5 Each signature in the random sample universe shall be ascribed to the ward in which the signer was a duly registered voter on the date the petition was signed, except that if the Board's records indicate that the voter filed a change of address after the date on which the petition was signed, but that was received on or before the petition was submitted, the signature shall be included in the ward of the voter's new address.

1009.6 If the number of signatures in the random sample universe does not meet or exceed the established ward and District-wide requirements, the Board shall reject the petition as numerically insufficient.

1009.7 If the number of signatures in the random sample universe meets or exceeds the established minimum ward and District-wide requirements, the Board shall supply the Data Management Division of the Office of Planning with the signatures in the random sample universe, broken down by ward. The Data Management Division shall draw and identify for the Board a sample of one hundred (100) signatures from each ward to be verified, except where:

(a) The Data Management Division determines that sampling the signatures of a given ward would not be necessary for the Board to make a determination to accept or reject the petition; or

(b) The Data Management Division determines that a sample larger than one hundred (100) must be drawn in order for the Board to make a determination to accept or reject the petition, and thus draws and identifies an appropriate sample size.

1009.8 In making the determination as to the authenticity of a signature, the Board shall disqualify a signature if the signature appearing on the petition does not match the signature on file in the Board's records.

1009.9 The Board shall report the number of authentic signatures in each ward sample ("random sample results") to the Data Management Division. Using the random

sample results, the Data Management Division shall employ formulas from the fields of probability and statistics to determine the following:

(a) Whether a ward equals or exceeds the required number of authentic signatures with ninety-five percent (95%) confidence, and should thus be accepted;

(b) Whether a ward does not equal or exceed the required number of authentic signatures with ninety-five percent (95%) confidence, and should thus be rejected; or

(c) Whether a larger sample should be drawn since no decision could be made with ninety-five percent (95%) confidence from the sample used.

1009.10 If the Data Management Division determines that at least five (5) of the eight (8) election wards have the required number of valid signatures, then it shall use a stratified random sampling formula to combine the figures from all wards which were sampled to determine whether the entire number of authentic signatures appearing on the petition is equal in number to five percent (5%) of the registered electors in the District of Columbia with ninety-five percent (95%) confidence. The Data Management Division shall request that the Board verify additional signatures for authenticity if a larger sample is needed to make a determination.

1009.11 If the total number of authentic signatures equals or exceeds the ward and District-wide signature requirements with ninety-five percent (95%) confidence, the Board shall certify the petition as numerically sufficient for ballot access.

1009.12 If the total number of authentic signatures fails to equal or exceed the ward and District-wide signature requirements with ninety-five percent (95%) confidence, the Board shall certify the petition as numerically insufficient to qualify for ballot access.

1010 DATE OF ELECTION

1010.1 At the time the Board certifies an initiative petition as numerically sufficient for ballot access, the Board shall call for the initiative measure to be included on the ballot for the next primary, general or city-wide special election held at least 90 days after the date on which the petition was certified as numerically sufficient.

1010.2 At the time the Board certifies a referendum petition as numerically sufficient for ballot access, the Board shall call a special election to occur within one hundred and fourteen (114) days after the date on which the petition was certified as numerically sufficient, provided that if a previously scheduled primary, general or special election will occur between 54 and 114 days after the date the measure has been certified as numerically sufficient, the Board may call for the referendum measure to be included on the ballot for that election.

1010.3 The Board shall publish the established legislative text in no less than two (2) newspapers of general circulation in the District of Columbia within thirty (30) calendar days after the date of certification of the initiative or referendum petition as numerically sufficient for ballot access.

1011 RETENTION OF RECORDS

1011.1 The Board shall preserve initiative and referendum petitions for one (1) year after the date of the election for which the petition was certified as numerically sufficient or insufficient.

1011.2 Initiative and referendum petitions shall be destroyed following the lapse of the one (1) year period unless legal action relating to the petitions is pending.

1012 PROPOSER SUBSTITUTION

1012.1 The proposer of an initiative or referendum measure shall serve as the proposer of record until such time as a proposer substitution occurs.

1012.2 A proposer substitution occurs when the proposer of record and the substitute proposer complete and sign the Proposer's Affidavit of Resignation and Substitution and affirm the following:

(a) The proposer of record consents to no longer receiving official correspondence from the Board concerning the initiative or referendum; and

(b) The substitute proposer is a registered qualified elector of the District.

Chapter 11 of Title 3 of the District of Columbia Municipal Regulations (DCMR) is amended in its entirety to read as follows:

CHAPTER 11 RECALL OF ELECTED OFFICIALS

1100 GENERAL PROVISIONS
1101 RESERVED
1102 PETITION FORM
1103 SIGNATURE REQUIREMENTS
1104 NON-RESIDENT CIRCULATORS
1105 FILING PETITIONS
1106 PETITION CHALLENGES
1107 VALIDITY OF SIGNATURES
1108 WATCHERS
1109 PETITION CERTIFICATION
1110 DATE OF ELECTION

1111 RETENTION OF RECORDS
1112 PROPOSER SUBSTITUTION

1100 GENERAL PROVISIONS

1100.1 This chapter governs the process by which the qualified electors of the District of Columbia may call for the holding of an election to remove or retain an elected official of the District of Columbia (except the Delegate to the House of Representatives) prior to the expiration of his or her term ("recall").

1100.2 For purposes of this chapter, unless otherwise provided, the following terms shall have the meaning ascribed:

(a) The term "elected official" means any of the following office holders:

(i) Mayor of the District of Columbia;

(ii) Members of the Council of the District of Columbia;

(iii) Attorney General for the District of Columbia;

(iv) United States Senator;

(v) United States Representative;

(vi) Members of the State Board of Education; and

(vii) Advisory Neighborhood Commissioner.

(b) The term "qualified petition circulator" means an individual who is:

(i) At least 18 years of age; and

(ii) Either a resident of the District of Columbia, or a resident of another jurisdiction who has registered as a petition circulator with the Board in accordance with this chapter.

1100.3 In order to commence recall proceedings against an elected official, a registered qualified elector shall file a Notice of Intent to Recall ("Recall Notice") in-person at the Board's office. A Recall Notice shall be considered properly filed under the following conditions:

(a) If the elected official sought to be recalled is either the Mayor, Chairman or Member of the Council; Attorney General, Senator, Representative, or Member of the State Board of Education, the Recall Notice is not filed within the first or last three hundred sixty-five (365) days of the elected official's term of office or within three hundred sixty-five (365) days of a recall election that was decided in the official's favor;

(b) If the elected official sought to be recalled is an Advisory Neighborhood Commissioner, the Recall Notice is not filed within the first or last six (6) months of the Commissioner's term of office or within six (6) months of a recall election that was decided in the Commissioner's favor;

(c) If the elected official sought to be recalled was elected from a ward or Single-Member District, each recall proposer is a registered qualified elector in the ward or Single-Member of the elected official sought to be recalled;

(d) Only one elected official is listed as the subject of the Recall Notice;

(e) The Recall Notice includes a statement of not more than two hundred (200) words giving the reasons for the proposed recall;

(f) The name, telephone number, email address, and residence address of each recall proposer is included and legible in the Recall Notice; and

(g) The Recall Notice is accompanied by a copy of the statement of organization and report(s) of receipts and expenditures that have been filed with the Office of Campaign Finance.

1100.4 Upon submission of a properly filed Recall Notice, the Executive Director or his or her designee shall issue a receipt to the proposer or his or her representative.

1100.5 Within five (5) calendar days after a Recall Notice has been properly filed, the General Counsel or his or her designee shall serve, personally or by certified mail, a copy of the Recall Notice on the elected official sought to be recalled. The elected official sought to be recalled may, within ten (10) calendar days after the Recall Notice was filed, submit a response of no more than two hundred (200) words to the Board. The General Counsel shall serve a copy of any response submitted on the recall proposer(s).

1101 RESERVED

1102 PETITION FORM

1102.1 The Board shall prepare and provide to the proposer at a public meeting an original petition form which the proposer shall reproduce at his or her own expense for use in circulating the petition. Each reproduced petition sheet shall be printed in its entirety on white paper of good writing quality of the same size as the original petition form prepared by the Board and shall be double-sided.

1102.2 The original petition form prepared by the Board shall contain the following:

(a) Numbered lines for twenty (20) names, designed so that each signer may personally affix the date signed and his or her signature, printed name, residence address (giving street and number) and election ward;

(b) A statement requesting that the Board hold a recall election in the manner prescribed in Charter Amendment No. 2 to Title IV of the District of Columbia Self-Government and Governmental Reorganization Act;

(c) The name of the elected officer sought to be recalled and the office held by that elected official;

(d) The name and address of the proposer or proposers of the recall;

(e) The statement of grounds for the recall and the response of the officer sought to be recalled, if any. If the officer sought to be recalled has not responded, the petition shall so state;

(f) A warning statement declaring that only duly registered qualified electors of the District of Columbia may sign the petition;

(g) Instructions advising signatories of the proper method of signing the petition as follows: EVERY PETITIONER MUST SIGN HIS OR HER OWN NAME. UNDER NO CIRCUMSTANCES IS ANY PERSON PERMITTED TO SIGN ANOTHER PERSON’S NAME OR SIGN MORE THAN ONCE. PRINT YOUR NAME AND RESIDENCE ADDRESS IN FULL.

(h) The words "PAID FOR BY" followed by the name and address of the payer or the committee or other person, and its treasurer on whose behalf the material appears, in the right hand corner of the front page.

1102.3 The second page of each petition form shall include a circulator’s affidavit, providing space for the circulator of a petition to record his or her name and address and the dates between which the signatures on the sheet were obtained. By signing the affidavit, the circulator swears under oath or affirms that:

(a) He or she is a qualified petition circulator;

(b) He or she was in the presence of each person who signed the petition at the time the petition was signed;

(c) According to the best information available to the circulator, each signature is the genuine signature of the person whose name it purports to be.

1102.4 No petition sheets may be circulated prior to the Board's provision of the original petition form.

1103 SIGNATURE REQUIREMENTS

1103.1 A petition to recall an at-large elected official shall contain the valid signatures of ten percent (10%) of the registered qualified electors of the District of Columbia, provided that the total number of signatures submitted shall include ten percent (10%) of the registered electors in each of five (5) or more of the eight (8) election wards.

1103.2 A petition to recall an elected official from a ward shall contain the valid signatures of ten percent (10%) of the registered qualified electors of the ward from which the official was elected.

1103.3 A petition to recall an elected official from a Single-Member District shall contain the valid signatures of ten percent (10%) of the registered qualified electors of the Single-Member District from which the official was elected.

1103.4 The number of registered qualified electors used for computing these signature requirements shall be based upon the latest official count of registered qualified electors made by the Board that was issued at least thirty (30) days prior to the submission of signatures for the particular recall election.

1104 NON-RESIDENT CIRCULATORS

1104.1 Each petition circulator who is not a resident of the District of Columbia shall, prior to circulating a petition, complete and file in-person at the Board's office a Non-Resident Petition Circulator Registration Form in which he or she:

(a) Provides the name of the measure in support of which he or she will circulate the petition;

(b) Provides his or her name, residential address, telephone number, and email address;

(c) Swears or affirms that he or she is at least eighteen (18) years of age;

(d) Acknowledges that he or she has received from the Board information regarding the rules and regulations governing the applicable petition circulation process, and that he or she will adhere to such rules and regulations;

(e) Consents to submit to the Board's subpoena power and to the jurisdiction of the Superior Court of the District of Columbia for the enforcement of Board subpoenas.

1104.2 Each non-resident petition circulator shall present proof of residence to the Board at the time he or she files the Non-Resident Petition Circulator Registration Form. Valid proof of residence is any official document showing the circulator's name and residence address. Acceptable forms of proof of residence include:

(a) A copy of a current and valid government-issued photo identification;

(b) A copy of a current utility bill, bank statement, government check, paycheck;

(c) A copy of a government-issued document; or

(d) A copy of any other official document, including leases or residential rental agreements, occupancy statements from homeless shelters, or tuition or housing bills from colleges or universities.

1105 FILING PETITIONS

1105.1 Where the elected official sought to be recalled is an elected official other than an Advisory Neighborhood Commissioner, a recall petition shall be submitted for filing no later than 5:00 p.m. on the one hundred and eightieth (180th) calendar day following the date upon which the Board provided the original petition form. Where the elected official sought to be recalled is an Advisory Neighborhood Commissioner, a recall petition shall be submitted for filing no later than 5:00 p.m. on the sixtieth (60th) calendar day following the date upon which the Board provided the original petition form. A petition that is not timely submitted shall not be accepted for filing

1105.2 All timely submitted petitions shall be received by the Executive Director or his or her designee. When a petition is offered for filing, the Executive Director shall:

(a) Count the petition pages and issue a receipt for the total number of petition pages submitted;

(b) Serially number the pages and obliterate any blank lines appearing on each petition page; and

(c) Prepare an initial total count, broken down by ward, of the signatures submitted.

1105.3 A signature shall not be accepted, and shall not be included in the Executive Director's initial total count, if it:

(a) Appears on a page that is not a reproduction of the form provided by the Board;

(b) Appears on a page which does not have a completed circulator affidavit;

(c) Was collected by someone who is not a qualified petition circulator; and

(d) Is the signature of a registered voter who submitted a notarized request to disallow his or her signature from being counted on the petition, provided that the request was received prior to the time the petition is filed.

1105.4 If the initial total count indicates that the petition contains the signatures of at least ten percent (10%) of the registered qualified electors residing in the political subdivision from which the elected official sought to be recalled is elected, the Executive Director shall accept the petition, post the petition for public inspection and challenge, and proceed with registration verification of petition signers in accordance with the rules of this chapter. If the petition does not contain the signatures of at least ten percent (10%) of the registered qualified electors residing in the political subdivision from which the elected official sought to be recalled is elected, the Executive Director refuse to accept the petition and shall notify the proposer(s) in writing of the refusal

1105.5 Within ten (10) days after the refusal, the proposer(s) of a refused petition may, pursuant to D.C. Official Code § 1-1001.(l) (2011 Repl.), petition the Superior Court of the District of Columbia for a writ in the nature of mandamus to compel the Board to accept the petition.

1106 PETITION CHALLENGES

1106.1 The Executive Director or his or her designee shall post all timely submitted petitions, or facsimiles thereof, in the Board's office for public inspection and

opportunity for challenge for ten (10) days, including Saturdays, Sundays, and holidays, beginning on the third (3rd) calendar day after the petitions are filed. For petitions to recall an Advisory Neighborhood Commissioner, the ten (10)-day period shall not include Saturdays, Sundays, and holidays.

1106.2 Except as provided in this section, the Board shall adjudicate the validity of each properly filed challenge in accordance with the procedures prescribed in Chapter 4 of this title. A challenge is properly filed if it:

(a) Cites the alleged signature or circulator requirement defects, as set forth in the signature validity rules of this chapter, by line and page;

(b) Is signed and submitted in-person at the Board's office by a qualified elector within the ten (10)-day posting period; and

(c) Allege the minimum number of signature defects which, if valid, would render the proposed measure ineligible for ballot access.

1106.3 Within three (3) working days of receipt of a properly filed challenge, the General Counsel or his or her designee shall serve a copy of the challenge upon the proposer, by first-class mail, or email.

1106.4 After receipt of a properly filed challenge, the Board's staff shall search the Board's registration records to prepare a recommendation to the Board as to the validity of the challenge.

1106.5 The Board shall receive evidence in support of and in opposition to the challenge and shall rule on the validity of the challenge no more than twenty (20) days after the challenge has been filed. The Board shall consider any other evidence as may be submitted, including but not limited to, documentary evidence, affidavits, and oral testimony.

1106.6 The Board, in view of the fact that it shall hear and determine the validity of the challenge within a limited time, may limit examination and cross-examination of witnesses to the following:

(a) Objections and specifications of such objections, if any, to the petition; and

(b) Objections and specifications of such objections, if any, to the petition challenge.

1106.7 Based upon the evidence received, the Board shall either reject or uphold the challenge, and accordingly grant or deny ballot access to the proposed measure whose petition was challenged.

1106.8 If a one (1)-member Board panel makes a determination on the validity of a challenge, either the challenger or the proposer may apply to either the full Board or the District of Columbia Court of Appeals for a review of such determination within three (3) days after the announcement of the one (1)-member panel determination; provided that any appeal to the full Board must be made in time to permit the Board to resolve the matter by no later than twenty (20) days after the challenge has been filed. An appeal from a full Board determination to the Court of Appeals shall be made within three (3) days.

1107 VALIDITY OF SIGNATURES

1107.1 A petition signature shall not be counted as valid in any of the following circumstances:

(a) The signer's voter registration was designated as inactive on the voter roll at the time the petition was signed;

(b) The signer, according to the Board's records, is not registered to vote at the address listed on the petition at the time the petition was signed and has failed to file a change of address form that is received by the Board on or before the date that the petition is filed;

(c) The signature is a duplicate of a valid signature;

(d) The signature is not dated;

(e) The petition does not include the address of the signer;

(f) The petition does not include the name of the signer where the signature is not sufficiently legible for identification;

(g) The circulator of the petition sheet was not a qualified petition circulator at the time the petition was signed;

(h) The circulator of the petition failed to complete all required information in the circulator's affidavit;

(i) The signature is not made by the person whose signature it purports to be, provided that registered voters who are unable to sign their names may make their marks in the space for signature. These marks shall not be counted as valid signatures unless the persons witnessing the marks shall attach to the petition affidavits that they explained the contents of the petitions to the signatories and witnessed their marks;

(j) The signer was also the circulator of the same petition sheet where the signature appears.

(k) The signature was obtained outside of the presence of the circulator;

(l) The signature was obtained on a petition sheet that was submitted on behalf of a previously filed petition that was rejected or found to be numerically insufficient; or

(m) The signer is not a registered voter in the ward or Single-Member District of the elected official sought to be recalled.

1108 WATCHERS

1108.1 Two (2) persons representing the proposer(s) and two (2) persons representing the elected official sought to be recalled may be present during the counting and validation procedures and shall be deemed watchers.

1108.2 To secure the presence of watchers, the proposer or elected official shall file a petition for credentials for watchers, within three (3) days from the date the recall petition is submitted for filing.

1108.3 Each petition for credentials shall be on a form furnished by the Board and shall contain the following:

(a) The name, address, telephone number, and signature of the proposer(s) or elected official;

(b) The names, addresses, and telephone numbers of the persons authorized to represent the proposer(s) or elected official and receive the badges from the Board; and

(c) A certificate that each proposed watcher shall conform to the regulations of the Board concerning watchers and the conduct of the counting and validation process.

1108.4 The Board shall issue a badge for each authorized watcher, with space for the watcher's name, the serial number of the measure, and the name of the proposer(s) or the elected official represented by the watcher.

1108.5 Badges shall be worn by the authorized watcher at all times when observing the counting and validation process.

1108.6 An authorized alternate watcher may, in the discretion of the proposer(s) or the political committee(s), be substituted for a watcher at any time during the

counting and validation process; provided, that notice is first given to the designated representative of the Board who is present.

1108.7 No watcher shall at any time during the counting and validation process do the following:

(a) Touch any official record of the Board; or

(b) Interfere with the progress of the counting and validation process or obstruct in any way the process.

1108.8 If a watcher has any questions or claims any discrepancy, inaccuracy, or error in the conduct of the procedures, he or she shall direct his or her question or complaint to the Board designee in charge.

1108.9 Any watcher who, in the judgment of the Board or its designated representative, has failed to comply with any of the rules in this section may be requested to leave the area where the verification process is being conducted, and the watcher's credentials shall be deemed canceled. An authorized alternate watcher may be substituted.

1109 PETITION CERTIFICATION

1109.1 Within thirty (30) calendar days after the acceptance of a recall petition for filing, the Board shall determine whether the petition contains the number of valid signatures necessary, in terms of percentage and ward distribution requirements, to be certified for ballot access.

1109.2 Upon the acceptance of a petition, the Executive Director or his or her designee shall:

(a) Verify the registration of each petition signer; and

(b) Determine the number of signatures of verified registrants.

1109.3 The signatures of the verified registrants shall comprise the universe of signatures from which a random sample will be drawn for purposes of verifying the signatures' authenticity ("random sample universe").

1109.4 A signature will not be counted and included in the random sample universe a signature if:

(a) The signer's voter registration was designated as inactive on the voter roll at the time the petition was signed;

(b) The signer, according to the Board's records, is not registered to vote at the address listed on the petition at the time the petition was

signed, except that, if the Board's records indicate that the voter filed a change of address after the date on which the petition was signed but that was received on or before the petition was submitted, the signature shall be included in the random sample universe;

(c) The signature is a duplicate of a valid signature;

(d) The signature is not dated;

(e) The petition does not include the printed or typed address of the signer;

(f) The petition does not include the printed or typed name of the signer where the signature is not sufficiently legible for identification;

(g) The circulator of the petition sheet was not a qualified petition circulator at the time the petition was signed;

(h) The circulator of the petition failed to complete all required information in the circulator's affidavit;

(i) The signer was also the circulator of the same petition sheet where the signature appears;

(j) The signature was obtained on a petition sheet that was submitted on behalf of a previously filed recall petition that was rejected or found to be numerically insufficient; or

(k) The signer is not a registered voter in the ward or Single-Member District of the elected official sought to be recalled.

1109.5 Each signature in the random sample universe shall be ascribed to the ward in which the signer was a duly registered voter on the date the petition was signed, except that if the Board's records indicate that the voter filed a change of address after the date on which the petition was signed, but that was received on or before the petition was submitted, the signature shall be included in the ward of the voter's new address.

1109.6 If the number of signatures in the random sample universe does not meet or exceed the established Single-Member District, ward and/or District-wide requirements, the Board shall reject the petition as numerically insufficient.

1109.7 If the number of signatures in the random sample universe meets or exceeds the established minimum requirements and the officer sought to be recalled is an

Advisory Neighborhood Commissioner, the Board shall verify the authenticity of all of the signatures in the random sample universe.

1109.8 If the number of signatures in the random sample universe meets or exceeds the established minimum requirements and the officer sought to be recalled is elected from a ward or at-large, the Board shall supply the Data Management Division of the Office of Planning with the signatures in the random sample universe, further broken down by ward if the elected official sought to be recalled is elected at-large.

1109.9 If the elected official sought to be recalled is elected at-large, the Data Management Division shall draw and identify for the Board a sample of one hundred (100) signatures from each ward to be verified ("random sample"), except where:

(a) The Data Management Division determines that sampling the signatures of a given ward would not be necessary for the Board to make a determination to accept or reject the petition; or

(b) The Data Management Division determines that a sample larger than one hundred (100) must be drawn in order for the Board to make a determination to accept or reject the petition, and thus draws and identifies an appropriate sample size.

1109.10 If the elected official sought to be recalled is elected from a ward, the Data Management Division shall determine the size of the random sample.

1109.11 In making the determination as to the authenticity of a signature, the Board shall disqualify a signature if the signature appearing on the petition does not match the signature on file in the Board's records.

1109.12 The Board shall report the number of authentic signatures in each ward sample ("random sample results") to the Data Management Division. Using the random sample results, the Data Management Division shall employ formulas from the fields of probability and statistics to determine the following:

(a) Whether a ward equals or exceeds the required number of authentic signatures with ninety-five percent (95%) confidence, and should thus be accepted;

(b) Whether a ward does not equal or exceed the required number of authentic signatures with ninety-five percent (95%) confidence, and should thus be rejected; or

(c) Whether a larger sample should be drawn since no decision could be made with ninety-five percent (95%) confidence from the sample used.

1109.13 In the case of an elected official sought to be recalled is elected at-large, if the Data Management Division determines that at least five (5) of the eight (8) election wards have the required number of valid signatures, then it shall use a stratified random sampling formula to combine the figures from all wards which were sampled to determine whether the entire number of authentic signatures appearing on the petition is equal in number to five percent (5%) of the registered electors in the District of Columbia with ninety-five percent (95%) confidence. The Data Management Division shall request that the Board verify additional signatures for authenticity if a larger sample is needed to make a determination.

1109.14 If the total number of authentic signatures equals or exceeds the District-wide and/or ward signature requirements with ninety-five percent (95%) confidence, the Board shall certify the petition as numerically sufficient for ballot access.

1109.15 If the total number of authentic signatures fails to equal or exceed the District-wide and/or ward signature requirements with ninety-five percent (95%) confidence, the Board shall certify the petition as numerically insufficient to qualify for ballot access.

1110 DATE OF ELECTION

1110.1 At the time the Board certifies a recall petition as numerically sufficient for ballot access, the Board shall call a special election to occur within one hundred and fourteen (114) days after the date on which the petition was certified as numerically sufficient, provided that if a previously scheduled general or special election will occur between 54 and 114 days after the date the measure has been certified as numerically sufficient, the Board may call for the measure to be included on the ballot for that election.

1110.2 If the certified recall petition proposes to recall an Advisory Neighborhood Commissioner, the Board may, in its discretion, conduct a special election by postal ballot.

1111 RETENTION OF RECORDS

1111.1 The Board shall preserve recall petitions for one (1) year after the date of the election for which the petition qualified or attempted to qualify for placement on the ballot.

1111.2 Recall petitions shall be destroyed following the lapse of the one (1) year period unless legal action relating to the petitions is pending.

1112 PROPOSER SUBSTITUTION

1112.1 The proposer of a recall measure shall serve as the proposer of record until such time as a proposer substitution occurs.

1112.2 A proposer substitution occurs when the proposer of record and the substitute proposer complete and sign the Proposer's Affidavit of Resignation and Substitution and affirm the following:

(a) The proposer of record consents to no longer receiving official correspondence from the Board concerning the measure; and

(b) The substitute proposer is a registered qualified elector of the District.

Chapter 12 of Title 3 of the District of Columbia Municipal Regulations (DCMR) is created to read as follows:

CHAPTER 12 BALLOTS

1200 BALLOT FORM AND CONTENT
1201 FICTITIOUS AND SAMPLE BALLOTS
1202 ORDER OF CONTESTS AND QUESTIONS
1203 CANDIDATES NAMES ON BALLOTS
1204 BALLOT POSITION LOTTERY

1200 BALLOT FORM AND CONTENT

1200.1 The Board shall provide official ballots to absentee voters and to voters on Election Day and at early voting centers to be used by the voter for indicating candidate or ballot measure preference in any contest.

1200.2 Official election ballots shall list:

(a) Any offices to be filled and candidates for nomination or election;

(b) The serial number, short title, and summary statement of each proposed initiative, referendum or Charter amendment, if any; and

(c) Each proposed recall measure, if any.

1200.3 Official ballots for primary elections shall be separate and color-coded for each political party qualified to participate in the election.

1200.4 Official ballots for qualified federal electors shall list only the offices of Electors of President and Vice President of the United States and Delegate to the United States House of Representatives and the candidates for each office, and shall be

provided in any primary, general or special election in which those offices are nominated or elected. Federal Ballots shall be restricted to qualified federal electors as defined in Chapter 5.

1200.5 Initiative, referendum and recall measures and proposed Charter amendments may appear on a separate ballot in any election.

1200.6 Candidates who are properly registered as a slate shall appear individually in each contest denoting parenthetically the name of the slate with which the candidate is registered.

1201 FICTITIOUS AND SAMPLE BALLOTS

1201.1 The Board shall publish in the *D.C. Register* a sample design and layout of the ballot ("fictitious ballot") to be used in each election not later than forty-five (45) days before the election.

1201.2 The Board shall publish a sample ballot to be used in each election (except the official ballot to be used in the Advisory Neighborhood Commissions elections) in one or more newspapers of general circulation in the District not more than twenty-one (21) days before each election.

1201.3 The Board shall permit the preparation and distribution of sample ballots, subject to the following requirements:

(a) Sample ballots shall be printed or reproduced on white paper; and

(b) Sample ballots shall be prominently marked on the front with the word(s) "Sample" or "Sample Ballot."

1202 ORDER OF CONTESTS AND QUESTIONS

1202.1 Contests and questions in any Primary, General or Special Election, if applicable to that election, shall appear on the ballot in the following order:

(a) Electors for President and Vice President of the United States;

(b) Delegate to the U.S. House of Representatives;

(c) Mayor of the District of Columbia;

(d) Chairman of the Council of the District of Columbia;

(e) At-Large Member of the Council of the District of Columbia;

(f) Ward Member of the Council of the District of Columbia;

(g) United States Senator;

(h) United States Representative;

(i) At-Large Member of the State Board of Education;

(j) Ward Member of the State Board of Education;

(k) Advisory Neighborhood Commissioner;

(l) Short title and summary statement of each proposed initiative, referendum, and Charter amendment; and

(m) Recall measures.

1202.2 In any election following the admittance of the proposed state of New Columbia to the union, the contests for United States Senator and United States Representative shall appear first on the ballot, or immediately following the contest for Electors of President and Vice President of the United States in presidential election years.

1203 CANDIDATES NAMES ON BALLOTS

1203.1 The name of a candidate for election shall appear on the ballot in the form designated on the Declaration of Candidacy executed and filed by the candidate in accordance with the provisions of Chapter 6 of this title; provided, that the name conforms to the following:

(a) The use of titles, degrees, and prefixes on the ballot is prohibited; and

(b) The candidate shall designate the listing of his or her name on the ballot by specifying the given name or names, or the initial letter of a given name, if any, and surname.

1203.2 The Board may permit a candidate to specify a modified form of his or her given name or names on the ballot if the Board finds that the change shall not confuse or mislead the voters and is legally acceptable.

1203.3 In any election, the order in which the names and slates of the candidates for office appear on the ballot shall be determined by lot pursuant to this chapter.

1203.4 Except where otherwise specified, the names of candidates nominated as a slate shall be listed on the ballot in the same order in which their names appear on the first page of their nominating petition.

1204 BALLOT POSITION LOTTERY

1204.1 In each primary, general and special election, the Board shall determine, by lot, the order of the candidates' names on the ballot in each contest.

1204.2 The Board shall notify each candidate for the offices appearing on the ballot of the date and time of the lottery to determine ballot position.

1204.3 The lottery to determine ballot position in any election shall be conducted in the following manner:

(a) The name of each candidate in a contest shall be typed or written on a slip of paper and placed in a container;

(b) Each candidate, or his or her designated representative, shall draw from the container one slip of paper;

(c) In the absence of a candidate, or his or her designated representative, the Board shall assign a local party committee chairperson, a registered voter, or one of its employees to draw for the absent candidate;

(d) The lottery for ballot position shall be conducted such that the names on the slips of paper shall be hidden from the view of the individual drawing; and

(e) The candidate whose name is pulled first from the container shall have his or her name appear first on the ballot; the candidate whose name is pulled second shall have his or her name placed second on the ballot; and this order shall continue until all candidate ballot positions have been determined.

1204.4 In the event of the death, withdrawal, or disqualification of a candidate from the ballot prior to the printing of the ballot, the position of each candidate that appears beneath the name of the former candidate shall be raised to the next higher position.

Chapter 13 of Title 3 of the District of Columbia Municipal Regulations (DCMR) is amended in its entirety to read as follows:

CHAPTER 13 ADVISORY NEIGHBORHOOD COMMISSION VACANCIES

1300 GENERAL PROVISIONS
1301 PETITION BY ANC FOR DECLARATION OF VACANCY
1302 DECLARATION OF VACANCY BY THE BOARD
1303 CERTIFICATION OF VACANCY AND PETITIONS
1304 APPOINTMENT OR ELECTION

1300 GENERAL PROVISIONS

1300.1 This chapter governs the process by which vacancies in the office of Advisory Neighborhood Commissioner are certified and filled.

1300.2 For the purposes of this chapter, a vacancy is deemed to exist in the office of a member of an Advisory Neighborhood Commissioner when any of the following occurs:

(a) Resignation of the incumbent by signed letter received by the Board, provided that if such resignation letter is prospective, the resignation is notarized, irrevocable, and effective not more than sixty (60) days following receipt of the letter;

(b) Failure of the incumbent to reside in the Single-Member District from which the member is elected, as determined by resolution of the Advisory Neighborhood Commission that has been certified by the Board, or by other findings of the Board, as described in this chapter;

(c) The incumbent holds another elected public office as defined by D.C. Official Code § 1-309.05(a)(2) (2006 Repl.);

(d) Death of the incumbent;

(e) Declaration of vacancy by a court;

(f) Successful recall of the incumbent; or

(g) When the office of an Advisory Neighborhood Commissioner from a Single-Member District remains vacant after a general election.

1301 PETITION BY ANC FOR DECLARATION OF VACANCY

1301.1 If a Commissioner fails to reside in the Single-Member District from which the Commissioner is elected and the Commissioner does not submit a letter of resignation, the affected Advisory Neighborhood Commission shall petition the Board by a resolution, signed by the Chairperson and secretary, to declare a vacancy. Consideration of the resolution shall meet all of the requirements as prescribed in D.C. Official Code § 1-309.06 (f)(2).

1301.2 A copy of the resolution, the minutes of the meeting at which the resolution was adopted, and a list of those individuals in attendance at the public meeting shall be sent to the Board, the Council of the District of Columbia, the Mayor, and the affected Commissioner. The resolution shall be a document, separate from all other papers, which states the reason for the vacancy. A separate resolution shall be required for each vacancy.

1301.3 The Executive Director or his or her designee shall post, by making available for public inspection, the resolution in the office of the Board for ten (10) working days, beginning on the third working day after receipt of the resolution.

1301.4 Any qualified elector may, within the ten (10) day period, challenge the validity of the resolution by a written statement, duly signed by the challenger and filed with the Board, specifying concisely the alleged defects in the resolution.

1301.5 Within three (3) working days of receipt of a challenge, the Board shall serve, in person or by certified mail, a copy of the challenge upon the Chairperson of the affected Advisory Neighborhood Commission.

1301.6 The Board shall receive evidence in support of and in opposition to the challenge and shall determine the validity of the challenged resolution not more than thirty (30) days after the challenge has been filed.

1301.7 If the Board upholds the validity of the resolution, it shall certify the seat as vacant and forward a copy of the certification and the resolution, by personal service or certified mail, within three (3) working days, to the Chairperson of the respective Advisory Neighborhood Commission. Within three (3) days after certification of the vacancy, either the challenger or the affected Commissioner may apply to the District of Columbia Court of Appeals for a review of the reasonableness of the determination.

1301.8 If, at the expiration of the challenge period, no challenge has been filed with respect to the resolution, the Board shall certify the vacancy.

1302 DECLARATION OF VACANCY BY THE BOARD

1302.1 If the Executive Director, through voter registration list maintenance activities, receives evidence that a Commissioner is no longer a registered qualified elector residing in the Single-Member District from which he or she was elected, the Executive Director, or his or her designee, shall present such evidence to the Board at a public hearing to determine whether a vacancy should be certified

1302.2 The Executive Director or his or her designee shall notify the Commissioner by certified mail of the hearing and provide the evidence supporting the existence of the vacancy. The hearing shall be held no fewer than twenty (20) days after the mailing of the Notice.

1302.3 The notice shall include the following information:

(a) A statement that the Executive Director or his or her designee shall present evidence that the Commissioner is not a registered

qualified elector residing in the Single-Member District from which elected; and

(b) A statement that the Commissioner may rebut the evidence, in-person or in writing.

1302.4 The Executive Director or his or her designee shall send copies of the notice to the following:

(a) The Chairperson of the affected commission;

(b) The Council of the District of Columbia; and

(c) The Mayor of the District of Columbia.

1302.5 The Board shall consider the Executive Director's evidence and any evidence presented in the rebuttal by the Commissioner. If the Board finds that the Commissioner is not a registered qualified elector residing in the Single-Member District from which he or she was elected, the Board shall certify the seat as vacant.

1302.6 Within three (3) days after the certification of the vacancy, the affected Commissioner may apply to the District of Columbia Court of Appeals for a review of the reasonableness of such determination.

1303 CERTIFICATION OF VACANCY AND PETITIONS

1303.1 Except when the vacancy occurs due to the Commissioner's failure to reside in the District from which the Commissioner was elected, the Executive Director or his or her designee shall be authorized to certify the seat as vacant and submit the notice for publication in the *D.C. Register*. Within five (5) business days after the date that the vacancy notice is published in the *D.C. Register*, the Executive Director shall make petitions available for obtaining signatures of registered electors within the respective Single-Member District, except that if a vacancy occurs within six (6) months of a general election, nominating petitions shall not be made available and the seat shall remain vacant for the remainder of the term of office. In the event petitions are not obtained by any registered qualified elector within the affected Single-Member District within fourteen (14) working days after petitions have been made available, the Board shall republish the vacancy notice.

1303.2 All rules established in Chapter 16 of this title shall apply, except that:

(a) The candidate's petition, Declaration of Candidacy, affidavits, and supplements, if any, shall be filed with the Board at its office not later than 4:45 p.m. within twenty-one (21) days of the date on which the Executive Director makes the petitions available; and

(b) The Executive Director or his or her designee shall post nominating petitions, or facsimiles thereof, in the Board's office for public inspection for five (5) working days beginning on the third (3rd) working day after the filing deadline.

1304 APPOINTMENT OR ELECTION

1304.1 Upon conclusion of the five (5) day nominating petition challenge period, the Executive Director or his or her designee shall certify the list of qualified candidates to fill the vacancy.

1304.2 If there is only one qualified candidate to fill the vacancy, the Executive Director shall certify the office as being filled by notice published in the *D.C. Register* and the Advisory Neighborhood Commissioners shall appoint the qualified candidate to the vacant Advisory Neighborhood Commissioner position at its next regularly scheduled meeting.

1304.3 If more than one qualified candidate is certified, the Executive Director shall transmit the list of qualified candidates to the affected area Advisory Neighborhood Commission. The Commission shall give notice at a public meeting that at the next regularly scheduled meeting there shall be an open vote of the members of the affected Single-Member District to elect the new commissioner. Upon conclusion of the election, the Commission shall transmit to the Board a resolution signed by the Chairman and Secretary of the Advisory Neighborhood Commission that states the winner of the election and requests that the Board certify the vacancy as filled by notice published in the *D.C. Register*.

Chapter 14 of Title 3 of the District of Columbia Municipal Regulations (DCMR) is amended in its entirety to read as follows:

CHAPTER 14 CANDIDATE NOMINATIONS: POLITICAL PARTY PRIMARIES FOR PRESIDENTIAL PREFERENCE AND CONVENTION DELEGATES

1400 GENERAL PROVISIONS
1401 RESERVED
1402 PETITION FORM
1403 SIGNATURE REQUIREMENTS
1404 NON-RESIDENT CIRCULATORS
1405 FILING PETITIONS
1406 PETITION CHALLENGES
1407 VALIDITY OF SIGNATURES
1408 WRITE-IN NOMINATION

1400 GENERAL PROVISIONS

1400.1 This chapter governs the process by which candidates for nomination for President of the United States ("candidate for presidential nominee") of each eligible political party in the District seek ballot access for the presidential preference primary.

1400.2 For purposes of this chapter, unless otherwise provided, the following terms shall be defined as follows:

(a) The term "eligible party" or "major party" means an authorized political party which is qualified to hold a party primary for partisan offices pursuant to D.C. Official Code § 1-1001.08 (h)(2);

(b) The term "qualified petition circulator" means an individual who is:

(i) At least 18 years of age; and

(ii) Either a resident of the District of Columbia, or a resident of another jurisdiction who has registered as a petition circulator with the Board in accordance with this chapter.

1400.3 The governing body of each eligible political party shall file the following with the Board of Elections, no later than one hundred eighty (180) days prior to the presidential preference primary election:

(a) Notification of that party's intent to conduct a presidential preference primary; and

(b) A plan for the election detailing the procedures to be followed in the selection of individual delegates and alternates to the convention of that party, including procedures for the selection of committed and uncommitted delegates ("party plan").

1400.4 The Board shall adhere to party plan procedures to the extent that such plan does not conflict with District law and regulations. If the party plan conflicts with District law and regulations, the General Counsel or his or her designee shall inform the party of the conflict.

1401 RESERVED

1402 PETITION FORM

1402.1 A nominating petition form shall be separately prepared and issued by the Executive Director or his or her designee for each candidate for presidential nominee.

1402.2 The first page of the petition shall contain the following information:

(a) The full name and state of residence of the candidate for presidential nominee, or if the petition is used to nominate an uncommitted delegation pursuant to party plan, the word "uncommitted" shall be placed on the petition in the space provided for the presidential candidate's name and state of residence;

(b) The name of the political party with which the candidate for presidential nominee, or uncommitted delegation, is affiliated;

(c) The name, address, voter registration number, and office sought by each candidate for convention delegate or alternate, if the party plan provides that convention delegates and alternates are to be listed on the ballot or on a separate reference sheet provided to the voter with the ballot; and

(d) A statement that all of the signatories to the petition shall be of the same political party as the nominee.

1402.3 The second page of the of the petition shall include a circulator's affidavit, providing space for the circulator of a nominating petition to record his or her name, address, and telephone number. By signing the affidavit, the circulator swears under oath or affirms that he or she:

(a) Is a qualified petition circulator;

(b) Personally circulated the petition sheet;

(c) Personally witnessed the signing of each signature on the petition sheet; and

(d) Inquired whether each signer is a registered voter in the District of Columbia and that the signer is a registered voter in the same political party as the candidate seeking nomination.

1402.4 No nominating petition shall be issued to any person other than the candidate whose name appears on the first page of the petition, unless the Board receives written notice from the candidate which authorizes the Board to release petitions in his or her name. The authorization shall include the following:

(a) Candidate's name;

(b) Office which the candidate seeks and political party; and

(c) Candidate's signature.

1403 SIGNATURE REQUIREMENTS

1403.1 To obtain ballot access, a candidate's petition shall contain a total of at least one thousand (1,000) signatures, or one percent (1%), whichever is less, of registered qualified electors of the District who are of the same political party as the candidate(s).

1404 NON-RESIDENT CIRCULATORS

1404.1 Each petition circulator who is not a resident of the District of Columbia shall, prior to circulating a petition, complete and file in-person at the Board's office a Non-Resident Petition Circulator Registration Form in which he or she:

(a) Provides the name of (and office sought by) the candidate in support of which he or she will circulate the petition;

(b) Provides his or her name, residential address, telephone number, and email address;

(c) Swears or affirms that he or she is at least eighteen (18) years of age;

(d) Acknowledges that he or she has received from the Board information regarding the rules and regulations governing the applicable petition circulation process, and that he or she will adhere to such rules and regulations;

(e) Consents to submit to the Board's subpoena power and to the jurisdiction of the Superior Court of the District of Columbia for the enforcement of Board subpoenas.

1404.2 Each non-resident petition circulator shall present proof of residence to the Board at the time he or she files the Non-Resident Petition Circulator Registration Form. Valid proof of residence is any official document showing the circulator's name and residence address. Acceptable forms of proof of residence include:

(a) A copy of a current and valid government-issued photo identification;

(b) A copy of a current utility bill, bank statement, government check, paycheck;

(c) A copy of a government-issued document; or

(d) A copy of any other official document, including leases or residential rental agreements, occupancy statements from homeless shelters, or tuition or housing bills from colleges or universities.

1405 FILING PETITIONS

1405.1 Before the nominating petition is filed, all sheets which comprise the petition shall be assembled and serially numbered.

1405.2 At the time of filing the nomination by petition, the following affidavits, forms, and declarations shall be filed on forms prescribed by the Board:

(a) If the petition nominates a specific presidential candidate, an affidavit executed personally by the presidential candidate ("Affidavit of Presidential Nominee Candidate") naming the candidates for delegate and alternate and stating their consent to the following:

(i) the appearance of his or her name on the primary ballot; and

(ii) if applicable, the appearance of each named delegate/alternate being listed on the ballot (or separate handout) as committed to his or her candidacy;

(b) If the petition nominates "uncommitted" delegates, one of the following affidavits or forms:

(i) If the party plan does not require the listing of delegates/alternates on the ballot or separate handout, an affidavit filed by the sponsor of the petition effort that he or she is a sponsor of the petition to place "uncommitted" on the ballot; or

(ii) If the party plan requires listing of delegates/alternates on the ballot or separate handout, a "Delegate Slate Registration Form" which provides the names of all candidates for delegate/alternate, and the name, address, telephone number and signature of the individual who is authorized to represent the delegates/alternates in matters before the Board;

(c) A Declaration of Candidacy for each candidate for delegate and alternate, as required by chapter 6 of this title; and

(d) An affidavit from each candidate for delegate and alternate stating that he or she was properly selected as a delegate/alternate pursuant to party rules ("declaration of proper selection").

1405.3 The nominating petition and supporting affidavits described in this section, as well as Declarations of Candidacy from each candidate for delegate and alternate (when applicable) as required pursuant to Chapter 6 of this title, shall be filed in-person at the Board's office no later than 5:00 p.m. on the 90th day preceding the election ("petition-filing deadline"). Any candidate may file petition supplements prior to the petition-filing deadline. All petitions and supplements shall be received by the Executive Director or his or her designee if filed on or before the petition-filing deadline. All petitions and supplements shall be accompanied by an affidavit executed by the person filing the petition or supplement attesting that to the best of his or her knowledge, the petition is complete and contains the legally required number of valid signatures.

1405.4 Within three (3) business days following the petition-filing deadline, the Executive Director or his or her designee shall issue a preliminary determination of petition sufficiency. In order to be determined sufficient, a petition nominating a candidate shall:

(a) Contain the minimum statutory number of signatures required to obtain ballot access for the office sought;

(b) Be on a form issued by the Executive Director or his or her designee in accordance with the rules of this chapter; and

(c) Be accompanied by the affidavits described in this section and the Declarations of Candidacy required by Chapter 6.

1405.5 In determining whether the minimum statutory number of signatures is contained in the nominating petition, the Executive Director or his or her designee shall not count any signatures submitted on petition pages that fail to include a completed circulator's affidavit or any signatures of registered voters who submitted a written notarized request to disallow the voter's signature from being counted on the petition; provided, that the request shall be received prior to the time the petition is filed.

1405.6 Notice of the Executive Director's preliminary determination of petition sufficiency shall be served immediately by email or first-class mail upon each candidate for delegate and alternate.

1405.7 In the event that it is determined that a candidate's nominating petition is insufficient, the candidate's nominating petition shall nevertheless be posted for

the challenge period specified in D.C. Official Code § 1-1001.08(o) (2011 Repl.), along with the Executive Director's preliminary determination.

1405.8 Within three (3) days of issuing a notice of petition insufficiency, a candidate aggrieved by the decision may file a written notice of appeal with the Board, duly signed by the candidate and specifying concisely the grounds for appeal.

1405.9 The Board shall hold a hearing on the appeal within three (3) days after receipt of the appeal notice.

1405.10 The hearing shall be conducted in accordance with the procedures provided in the District of Columbia Administrative Procedure Act, D.C. Official Code §§ 2-501 *et seq*. (2011 Repl.), and may be heard by a one-member panel (D.C. Official Code § 1-1001.05(g) (2011 Repl.)).

1405.11 Any appeal from a decision of a one-member panel to the full Board shall be taken in the manner prescribed by D.C. Official Code § 1-1001.05(g) (2011 Repl.); however, in no case shall the time allowed for the appeal exceed three (3) business days from the date of decision of the one-member panel.

1406 PETITION CHALLENGES

1406.1 The Executive Director or his or her designee shall post nominating petitions, or facsimiles thereof, in the Board's office for public inspection and opportunity for challenge for ten (10) days, including Saturdays, Sundays, and holidays, beginning on the third (3rd) calendar day after the petition-filing deadline required by law.

1406.2 Except as provided in this section, the Board shall adjudicate the validity of each properly filed challenge in accordance with the procedures prescribed in Chapter 4 of this title. A challenge is properly filed if it:

(a) Cites the alleged signature or circulator requirement defects, as set forth in the signature validity rules of this chapter, by line and page;

(b) Is signed and submitted in-person at the Board's office by a qualified elector within the ten (10)-day posting period; and

(c) Alleges the minimum number of signature defects which, if valid, would render the prospective candidate ineligible for ballot access.

1406.3 Within three (3) working days of receipt of a properly filed challenge, the General Counsel or his or her designee shall serve a copy of the challenge upon the candidate in-person, by first-class mail, or by email.

1406.4 After the receipt of a properly filed challenge, the Board's staff shall search the Board's permanent registration records to prepare a recommendation to the Board as to the validity of the challenge. The scope of the search shall be limited to matters raised in the challenge. In the event Board staff discovers a fatal defect either on the face of a petition or pursuant to a record search concerning a specific allegation or challenge, the Board may, on its own motion, declare any signature(s) invalid, notwithstanding the defect was not alleged or challenged; alternatively, the Board, in its discretion, may waive any formal error.

1406.5 The Board shall receive evidence in support of and in opposition to the challenge and shall rule on the validity of the challenge no more than twenty (20) days after the challenge has been filed. The Board shall consider any other evidence as may be submitted, including but not limited to, documentary evidence, affidavits, and oral testimony.

1406.6 The Board, in view of the fact that it shall hear and determine the validity of the challenge within a limited time, may limit examination and cross-examination of witnesses to the following:

(a) Objections and specifications of such objections, if any, to the nominating petition; and

(b) Objections and specifications of such objections, if any, to the petition challenge.

1406.7 Based upon the evidence received, the Board shall either reject or uphold the challenge, and accordingly grant or deny ballot access to the candidate whose petition was challenged.

1406.8 If a one (1)-member Board panel makes a determination on the validity of a challenge, either the challenger or any person named in the challenged petition as a nominee may apply to either the full Board or the District of Columbia Court of Appeals for a review of such determination within three (3) days after the announcement of the one (1)-member panel determination; provided that any appeal to the full Board must be made in time to permit the Board to resolve the matter by no later than twenty (20) days after the challenge has been filed. An appeal from a full Board determination to the Court of Appeals shall be made within three (3) days.

1406.9 If at the expiration of the challenge period referred to in this section, no challenge has been filed with respect to a nominating petition, the Executive Director, or his or her designee, shall certify the candidate, and the candidate's name shall be printed on the ballot.

1407 VALIDITY OF SIGNATURES

1407.1 Once a nominating petition has been challenged pursuant to this chapter, a signature shall not be counted as valid in any of the following circumstances:

(a) The signer's voter registration was designated as inactive on the voter roll at the time the petition was signed;

(b) The signer, according to the Board's records, is not registered to vote at the address listed on the petition at the time the petition was signed; provided that an address on a petition which is different than the address which appears on the Board's records shall be deemed valid if the signer's current address is within the boundary from which the candidate seeks nomination and the signer files a change of address form with the Board during the first 10 days following the date on which a challenge to the nominating petition is filed;

(c) The signature is a duplicate of a valid signature;

(d) The signature is not dated;

(e) The petition does not include the address of the signer;

(f) The petition does not include the name of the signer where the signature is not sufficiently legible for identification;

(g) The circulator of the petition sheet was not a qualified petition circulator at the time the petition was signed;

(h) The circulator of the petition failed to complete all required information in the circulator's affidavit;

(i) The signature is not made by the person whose signature it purports to be; provided that registered voters who are unable to sign their names may make their marks in the space for signature. These marks shall not be counted as valid signatures unless the persons witnessing the marks shall attach to the petition affidavits that they explained the contents of the petitions to the signatories and witnessed their marks;

(j) Reserved;

(k) Reserved;

(l) Reserved;

(m) Reserved; or

(n) The signer is not registered to vote in the same party as the candidate at the time the petition is signed;

1408 WRITE-IN NOMINATION

1408.1 Write-in nominations for President and Vice President of the United States shall be permitted, subject to the party's plan submitted to the Board pursuant to this chapter. Affirmation of write-in candidacy shall proceed in accordance with the provisions of Chapter 6 of this title.

Chapter 15 of Title 3 of the District of Columbia Municipal Regulations (DCMR) is amended in its entirety to read as follows:

CHAPTER 15 CANDIDATE NOMINATIONS: ELECTORS OF PRESIDENT AND VICE PRESIDENT OF THE UNITED STATES

1500 GENERAL PROVISIONS
1501 APPROVAL OF POLITICAL PARTY NAMES
1502 PETITION FORM
1503 SIGNATURE REQUIREMENTS
1504 NON-RESIDENT CIRCULATORS
1505 FILING PETITIONS
1506 PETITION CHALLENGES
1507 VALIDITY OF SIGNATURES
1508 WRITE-IN NOMINATION

1500 GENERAL PROVISIONS

1500.1 This chapter governs the process for obtaining ballot access and the process by which candidates seek nomination to the office of elector of President and Vice President of the United States (hereinafter, "presidential electors").

1500.2 For purposes of this chapter, unless otherwise provided, the following terms shall be defined as follows:

(a) The term "ballot access" means the process by which the names of candidates for President and Vice President are placed on the general election ballot.

(b) The term "authorized political party" means a political party that was organized prior to and continuously from the passage of the District of Columbia Election Code of 1955, approved August 12, 1955 (69 Stat. 699; D.C. Official Code § 1-1001.01 *et seq.*), or whose name has been approved by the Board pursuant to the rules of this chapter;

(c) The term "qualified petition circulator" means an individual who is:

(i) At least 18 years of age; and

(ii) Either a resident of the District of Columbia, or a resident of another jurisdiction who has registered as a petition circulator with the Board in accordance with this chapter.

1500.3 To obtain ballot access, presidential electors shall be nominated in either of the following manners:

(a) By message; or

(b) By nominating petition.

1500.4 Each authorized political party which had in the next preceding election year at least seven thousand five hundred (7,500) votes cast in the general election for a candidate of the party to the office of Delegate, Mayor, Chairman of the Council, or member of the Council may obtain ballot access and nominate presidential electors by message pursuant to the provisions of D.C. Official Code § 1-1001.10 (2011 Repl.). Nominations made by message shall be in writing, signed by the chairperson or other duly authorized official of the party's executive committee in the District of Columbia, and shall contain the following information:

(a) The name of the political party;

(b) The names of the party's candidates for President and Vice President; and

(c) The names, addresses and registration numbers of the three candidates for presidential electors of that party.

1500.5 Each authorized political party which is ineligible to nominate presidential electors by message shall obtain ballot access by nominating presidential electors by petition pursuant to the rules of this chapter. Candidates without a party affiliation ("independents") shall also obtain ballot access by nominating presidential electors by petition.

1500.6 At the time of filing either the nomination by message or nomination by petition, the following affidavits and declarations shall be filed on forms prescribed by the Board:

(a) An affidavit from each of the three (3) candidates for presidential electors ("Affidavit of Presidential Elector Candidate") stating that:

(i) The candidate meets all the legal requirements for office;

(ii) The nomination as a candidate for presidential elector is filed with the nominee's knowledge and consent; and

(iii) If elected as a presidential elector, the candidate intends to vote in the electoral college for the presidential and vice presidential candidates nominated by the designated political party or whose nomination the accompanying petition was filed in support of.

(b) An affidavit executed personally by the presidential and vice presidential candidates ("Affidavit of Presidential and Vice Presidential Candidate"), stating their consent to the following:

(i) The appearance of their names on the general election ballot; and

(ii) Representation in the electoral college by each of the three (3) named presidential electors, in the event that their presidential electors are elected in the District of Columbia; and

(c) A Declaration of Candidacy for each candidate for presidential elector, executed in accordance with chapter 6 of this title.

1500.7 Nominations by message and supporting affidavits and Declarations of Candidacy shall be filed with the Board not later than 5:00 p.m. on September 1st of each presidential election year, unless the deadline for these documents has been waived for good cause following the executive committee's written request for such waiver to the Board.

1501 APPROVAL OF POLITICAL PARTY NAMES

1501.1 Application for approval of a political party name shall be made on a form prescribed by the Board.

1501.2 The application for approval of a political party name shall include the name, address, telephone number, and voter registration number of the chairperson,

treasurer, other principal officers, and each member of the duly authorized local committee of such party in the District.

1501.3 The Board may reject any name that, in the judgment of the Board, tends to confuse or mislead the public.

1501.4 No nominating petition shall be issued to a person seeking nomination as a candidate affiliated with a political party unless the name of such political party has been previously approved by a majority vote of the Board.

1502 PETITION FORM

1502.1 A nominating petition form shall be separately prepared and issued by the Executive Director or his or her designee for each pair of candidates for President and Vice President.

1502.2 The first page of the petition shall contain the following information:

(a) The names of the candidates for President and Vice President and the candidates' political party or "independent";

(b) The names, addresses, and registration number of the three (3) candidates for presidential electors; and

(c) A statement indicating that any registered voter, regardless of party affiliation, may sign the petition; and

(d) A statement that only the names of the candidates for President and Vice President will be listed on the ballot.

1502.3 The second page of the petition shall include a circulator's affidavit, providing space for the circulator of a nominating petition to record his or her name, address, and telephone number. By signing the affidavit, the circulator swears under oath or affirms that he or she:

(a) Is a qualified petition circulator;

(b) Personally circulated the petition sheet;

(c) Personally witnessed the signing of each signature on the petition sheet; and

(d) Inquired whether each signer is a registered voter in the District of Columbia.

1502.4 No nominating petition shall be issued to any person other than the candidate whose name appears on the first page of the petition, unless the Board receives written notice from the candidate which authorizes the Board to release petitions in his or her name. The authorization shall include the following:

(a) Candidate's name;

(b) Office which the candidate seeks and political party; and

(c) Candidate's signature.

1503 SIGNATURE REQUIREMENTS

1503.1 To obtain ballot access, a candidate's petition shall contain the signatures of duly registered voters, equal in number to at least one percent (1%) of the total number of registered voters in the District of Columbia, as shown by the records of the Board as of the one forty-fourth (144th) day before the date of the presidential election.

1504 NON-RESIDENT CIRCULATORS

1504.1 Each petition circulator who is not a resident of the District of Columbia shall, prior to circulating a petition, complete and file in-person at the Board's office a Non-Resident Petition Circulator Registration Form in which he or she:

(a) Provides the name of (and office sought by) the candidate in support of which he or she will circulate the petition;

(b) Provides his or her name, residential address, telephone number, and email address;

(c) Swears or affirms that he or she is at least eighteen (18) years of age;

(d) Acknowledges that he or she has received from the Board information regarding the rules and regulations governing the applicable petition circulation process, and that he or she will adhere to such rules and regulations;

(e) Consents to submit to the Board's subpoena power and to the jurisdiction of the Superior Court of the District of Columbia for the enforcement of Board subpoenas.

1504.2 Each non-resident petition circulator shall present proof of residence to the Board at the time he or she files the Non-Resident Petition Circulator Registration Form.

Valid proof of residence is any official document showing the circulator's name and residence address. Acceptable forms of proof of residence include:

(a) A copy of a current and valid government-issued photo identification;

(b) A copy of a current utility bill, bank statement, government check, paycheck;

(c) A copy of a government-issued document; or

(d) A copy of any other official document, including leases or residential rental agreements, occupancy statements from homeless shelters, or tuition or housing bills from colleges or universities.

1505 FILING PETITIONS

1505.1 Before the nominating petition is filed, all sheets which comprise the petition shall be assembled and serially numbered.

1505.2 The nominating petition and supporting affidavits, as well as the Declarations of Candidacy from each candidate for Presidential Elector as required pursuant to Chapter 6 of this title, shall be filed in-person at the Board's office no later than 5:00 p.m. on the 90th day preceding the election ("petition-filing deadline"). Any candidate may file petition supplements prior to the petition-filing deadline, provided that the supplements are accompanied by an affidavit executed by the person filing them. All petitions and supplements shall be received by the Executive Director or his or her designee if filed on or before the petition-filing deadline.

1505.3 Within three (3) business days following the petition-filing deadline, the Executive Director or his or her designee shall issue a preliminary determination of petition sufficiency. In order to be determined sufficient, a petition nominating a candidate shall:

(a) Contain the minimum statutory number of signatures required to obtain ballot access for the office sought;

(b) Be accompanied by an affidavit executed by the person filing the petition, attesting that to the best of his or her knowledge, the petition is complete and contains the legally required number of valid signatures; and

(c) Be on a form issued by the Executive Director or his or her designee in accordance with the rules of this chapter;

1505.4 In determining whether the minimum statutory number of signatures is contained in the nominating petition, the Executive Director or his or her designee shall not count any signatures submitted on petition pages that fail to include a completed circulator's affidavit or any signatures of registered voters who submitted a written notarized request to disallow the voter's signature from being counted on the petition; provided, that the request shall be received prior to the time the petition is filed.

1505.5 Notice of the Executive Director's preliminary determination of petition sufficiency shall be served immediately by email or first-class mail upon each candidate.

1505.6 In the event that it is determined that a candidate's nominating petition is insufficient, the candidate's nominating petition shall nevertheless be posted for the challenge period specified in D.C. Official Code § 1-1001.08(o) (2011 Repl.), along with the Executive Director's preliminary determination.

1505.7 Within three (3) days of issuing a notice of an adverse determination, a candidate aggrieved by the decision may file a written notice of appeal with the Board, duly signed by the candidate and specifying concisely the grounds for appeal.

1505.8 The Board shall hold a hearing on the appeal within three (3) days after receipt of the appeal notice.

1505.9 The hearing shall be conducted in accordance with the procedures provided in the District of Columbia Administrative Procedure Act, D.C. Official Code §§ 2-501 *et seq*. (2011 Repl.), and may be heard by a one-member panel (D.C. Official Code § 1-1001.05(g) (2011 Repl.)).

1505.10 Any appeal from a decision of a one-member panel to the full Board shall be taken in the manner prescribed by D.C. Official Code § 1-1001.05(g) (2011 Repl.); however, in no case shall the time allowed for the appeal exceed fourteen (14) calendar days from the date of decision of the one-member panel.

1506 PETITION CHALLENGES

1506.1 The Executive Director or his or her designee shall post nominating petitions, or facsimiles thereof, in the Board's office for public inspection and opportunity for challenge for ten (10) days, including Saturdays, Sundays, and holidays, beginning on the third (3rd) calendar day after the petition-filing deadline required by law.

1506.2 Except as provided in this section, the Board shall adjudicate the validity of each properly filed challenge in accordance with the procedures prescribed in chapter 4 of this title. A challenge is properly filed if it:

(a) Cites the alleged signature or circulator requirement defects, as set forth in the signature validity rules of this chapter, by line and page;

(b) Is signed and submitted in-person at the Board's office by a qualified elector within the ten (10)-day posting period; and

(c) Alleges the minimum number of signature defects which, if valid, would render the prospective candidate ineligible for ballot access.

1506.3 Within three (3) working days of receipt of a properly filed challenge, the General Counsel or his or her designee shall serve a copy of the challenge upon the candidate in-person, by first-class mail, or email.

1506.4 After the receipt of a properly filed challenge, the Board's staff shall search the Board's permanent registration records to prepare a recommendation to the Board as to the validity of the challenge. The scope of the search shall be limited to matters raised in the challenge. In the event Board staff discovers a fatal defect either on the face of a petition or pursuant to a record search concerning a specific allegation or challenge, the Board may, on its own motion, declare any signature(s) invalid, notwithstanding the defect was not alleged or challenged; alternatively, the Board, in its discretion, may waive any formal error.

1506.5 The Board shall receive evidence in support of and in opposition to the challenge and shall rule on the validity of the challenge no more than twenty (20) days after the challenge has been filed. The Board shall consider any other evidence as may be submitted, including but not limited to, documentary evidence, affidavits, and oral testimony.

1506.6 The Board, in view of the fact that it shall hear and determine the validity of the challenge within a limited time, may limit examination and cross-examination of witnesses to the following:

(a) Objections and specifications of such objections, if any, to the nominating petition; and

(b) Objections and specifications of such objections, if any, to the petition challenge.

1506.7 Based upon the evidence received, the Board shall either reject or uphold the challenge, and accordingly grant or deny ballot access to the candidate whose petition was challenged.

1506.8 If a one (1)-member Board panel makes a determination on the validity of a challenge, either the challenger or any person named in the challenged petition as a nominee may apply to either the full Board or the District of Columbia Court of

Appeals for a review of such determination within three (3) days after the announcement of the one (1)-member panel determination; provided that any appeal to the full Board must be made in time to permit the Board to resolve the matter by no later than twenty (20) days after the challenge has been filed. An appeal from a full Board determination to the Court of Appeals shall be made within three (3) days.

1506.9 If at the expiration of the challenge period referred to in this section, no challenge has been filed with respect to a nominating petition, the Executive Director, or his or her designee, shall certify the candidate, and the candidate's name shall be printed on the ballot.

1507 VALIDITY OF SIGNATURES

1507.1 Once a nominating petition has been challenged pursuant to this chapter, a signature shall not be counted as valid in any of the following circumstances:

(a) The signer's voter registration was designated as inactive on the voter roll at the time the petition was signed;

(b) The signer, according to the Board's records, is not registered to vote at the address listed on the petition at the time the petition was signed; provided that an address on a petition which is different than the address which appears on the Board's records shall be deemed valid if the signer's current address is within the boundary from which the candidate seeks nomination and the signer files a change of address form with the Board during the first 10 days following the date on which a challenge to the nominating petition is filed.

(c) The signature is a duplicate of a valid signature;

(d) The signature is not dated;

(e) The petition does not include the address of the signer;

(f) The petition does not include the name of the signer where the signature is not sufficiently legible for identification;

(g) The circulator of the petition sheet was not a not a qualified petition circulator at the time the petition was signed;

(h) The circulator of the petition failed to complete all required information in the circulator's affidavit; or

(i) The signature is not made by the person whose signature it purports to be; provided that registered voters who are unable to sign their names may make their marks in the space for signature. These marks shall not be counted as valid signatures unless the persons witnessing the marks shall attach to the petition affidavits that they explained the contents of the petitions to the signatories and witnessed their marks.

1508 WRITE-IN NOMINATION

1508.1 Write-in nominations for President and Vice President of the United States shall be permitted. Affirmation of write-in candidacy shall proceed in accordance with the provisions of Chapter 6 of this title.

Chapter 16 of Title 3 of the District of Columbia Municipal Regulations (DCMR) is amended in its entirety to read as follows:

CHAPTER 16 CANDIDATE NOMINATION: DELEGATE U.S. HOUSE OF REPRESENTATIVES, MAYOR, CHAIRMANAND MEMBERS OF THE COUNCIL OF DISTRICT OF COLUMBIA, ATTORNEY GENERAL, U.S. SENATOR, U.S. REPRESENTATIVE, MEMBERS OF THE STATE BOARD OF EDUCATION, AND ADVISORY NEIGHBORHOOD COMMISSIONER

1600 GENERAL PROVISIONS
1601 APPROVAL OF POLITICAL PARTY NAMES
1602 PETITION FORM
1603 SIGNATURE REQUIREMENTS
1604 NON-RESIDENT CIRCULATORS
1605 FILING PETITIONS
1606 PETITION CHALLENGES
1607 VALIDITY OF SIGNATURES
1608 WRITE-IN NOMINATION

1600 GENERAL PROVISIONS

1600.1 This chapter governs the process by which candidates seek nomination to the offices of Delegate to the U.S. House of Representatives, Mayor, Chairman and Members of the Council of the District of Columbia, Attorney General, U.S. Senator, U.S Representative, Members of the State Board of Education, and Advisory Neighborhood Commissioner.

1600.2 For purposes of this chapter, unless otherwise provided, the following terms shall be defined as follows:

(a) The term "authorized political party" means a political party that was organized prior to and continuously from the passage of the District of Columbia Election Code of 1955, approved August 12, 1955 (69 Stat. 699; D.C. Official Code § 1-1001.01 *et seq*.), or whose name has been approved by the Board pursuant to the rules of this chapter;

(b) The term "major party" means an authorized political party which is qualified to hold a party primary for partisan offices pursuant to D.C. Official Code § 1-1001.08 (h)(2);

(c) The term "minor party" means an authorized political party which is not qualified to hold a party primary for partisan offices pursuant to D.C. Official Code § 1-1001.08 (h)(2);

(d) The term "District partisan office" means the offices of Delegate to the U.S. House of Representatives, Mayor, Chairman and Members of the Council of the District of Columbia, Attorney General, U.S. Senator, and U.S Representative;

(e) The term "direct nomination" ("nominated directly") means seeking nomination during an election other than a primary pursuant to D.C. Official Code § 1-1001.08 (j)(1);

(f) The term "qualified petition circulator" means an individual who is:

(i) At least 18 years of age; and

(ii) Either a resident of the District of Columbia, or a resident of another jurisdiction who has registered as a petition circulator with the Board in accordance with this chapter.

(g) The term "independent" refers to an individual who is not affiliated with any authorized political party.

1600.3 Each candidate for District partisan office shall seek nomination as a candidate who is either:

(a) Registered with a major party;

(b) Registered with a minor party; or

(c) Registered as an independent.

1600.4 Any person who seeks nomination as a candidate for District partisan office and who is registered with a major party shall be required to seek nomination during such political party's primary election. No person who is registered with a major party shall be nominated directly as a candidate for District partisan office in any general election.

1600.5 No person shall be nominated directly for District partisan office in a general election if such person's name was printed upon a ballot of any immediately preceding primary election for that office.

1600.6 Each candidate seeking nomination of any authorized political party shall be registered with such party.

1600.7 No person who is registered with any authorized political party shall be permitted to seek direct nomination as an independent candidate.

1601 APPROVAL OF POLITICAL PARTY NAMES

1601.1 Application for approval of a political party name shall be made on a form prescribed by the Board.

1601.2 The application for approval of a political party name shall include the name, address, telephone number, and voter registration number of the chairperson, treasurer, other principal officers, and each member of the duly authorized local committee of such party in the District.

1601.3 The Board may reject any name that, in the judgment of the Board, tends to confuse or mislead the public.

1601.4 No nominating petition shall be issued to a person seeking nomination as a candidate affiliated with a political party unless the name of such political party has been previously approved by a majority vote of the Board.

1602 PETITION FORM

1602.1 A nominating petition form shall be separately prepared and issued by the Executive Director or his or her designee for each candidate seeking nomination to the office of Delegate, Mayor, Chairman and Members of the Council of the District of Columbia, Attorney General, U.S. Senator, U.S. Representative, Member of the State Board of Education, and Advisory Neighborhood Commissioner.

1602.2 The first page of the petition shall contain the following information:

(a) The name and address of the candidate, registration number, and office to which the candidate seeks nomination;

(b) In the case of a District partisan office, either the candidate's political party, or "independent";

(c) If the candidate is running from a ward or single-member district, a statement that all signatories shall be registered and be residents of the ward or single-member district from which the candidate seeks nomination;

(d) If the candidate is seeking nomination of a major party, a statement indicating that signers of the petition shall be of the same political party as the candidate; and

(e) If the candidate is seeking direct access nomination, a statement indicating that any registered voter, regardless of party affiliation, may sign the petition.

1602.3 The second page of the nominating petition form shall include a circulator's affidavit, providing space for the circulator of a nominating petition to record his or her name and address. By signing the affidavit, the circulator swears under oath or affirms that he or she:

(a) Is a qualified petition circulator;

(b) Personally circulated the petition sheet;

(c) Personally witnessed the signing of each signature on the petition sheet; and

(d) Inquired whether each signer is a registered voter in the District of Columbia, and where applicable, that the signer is a registered voter in the same political party and/or ward or single-member district as the candidate seeking nomination.

1602.4 No nominating petition shall be issued to any person other than the candidate unless the Board receives written notice from the candidate which authorizes the Board to release petitions in his or her name. The authorization shall include the following:

(a) Candidate's name;

(b) Office which the candidate seeks and political party, if the office sought is partisan; and

(c) Candidate's signature.

1603 SIGNATURE REQUIREMENTS

1603.1 To obtain ballot access for a primary election, a candidate's petition for the office of Delegate, Mayor, Attorney General, Chairman of the Council, At-Large Member of the Council, U.S. Senator or U.S. Representative shall contain the signatures of at least two thousand (2,000) persons who are duly registered in the same political party as the candidate, or of one percent (1%) of the duly registered voters of such political party, whichever is less, as shown by the records of the Board as of the one hundred forty-fourth (144th) day before the date of the Primary Election.

1603.2 To obtain ballot access for a Primary Election, a candidate's petition for the office of Member of the Council elected from a ward, shall contain the signatures of at least two hundred fifty (250) persons who are duly registered in the same political party and ward as the candidate or one percent (1%) of the duly registered voters, whichever is less, as shown on records of the Board as of the one hundred forty-fourth (144th) day before the date of the Primary Election.

1603.3 To obtain ballot access for a general or special election (Direct Access Nomination), a candidate's petition for the office of Delegate, Mayor, Attorney General, Chairman of the Council, At-Large Member of the Council, U.S. Senator, or U.S. Representative shall contain the signatures of at least three thousand (3,000) duly registered voters in the District or of at least one and one-half per cent (1.5%) of the total number of registered voters in the District, whichever is less, as shown on the Board's records as of the one hundred forty-fourth (144th) day before the date of the General Election.

1603.4 To obtain ballot access for a general or special election (Direct Access Nomination), a candidate's petition for the office of Member of the Council from a ward shall contain the signatures of at least five hundred (500) persons who are duly registered in the ward from which the candidate seeks election.

1603.5 To obtain ballot access, a candidate's petition for the office of Member of the State Board of Education elected at-large shall contain the signatures of at least one thousand (1,000) duly registered voters.

1603.6 To obtain ballot access, a candidate's petition for the office of Member of the State Board of Education elected from a ward shall contain the signatures of at least two hundred (200) persons duly registered in the ward from which the candidate seeks election.

1603.7 To obtain ballot access, a candidate's petition for the office of Advisory Neighborhood Commissioner shall contain the signatures of at least twenty-five (25) persons duly registered in the single member district from which the candidate seeks election.

1604 NON-RESIDENT CIRCULATORS

1604.1 Each petition circulator who is not a resident of the District of Columbia shall, prior to circulating a petition, complete and file in-person at the Board's office a Non-Resident Petition Circulator Registration Form in which he or she:

(a) Provides the name of (and office sought by) the candidate in support of which he or she will circulate the petition;

(b) Provides his or her name, residential address, telephone number, and email address;

(c) Swears or affirms that he or she is at least eighteen (18) years of age;

(d) Acknowledges that he or she has received from the Board information regarding the rules and regulations governing the applicable petition circulation process, and that he or she will adhere to such rules and regulations;

(e) Consents to submit to the Board's subpoena power and to the jurisdiction of the Superior Court of the District of Columbia for the enforcement of Board subpoenas.

1604.2 Each non-resident petition circulator shall present proof of residence to the Board at the time he or she files the Non-Resident Petition Circulator Registration Form. Valid proof of residence is any official document showing the circulator's name and residence address. Acceptable forms of proof of residence include:

(a) A copy of a current and valid government-issued photo identification;

(b) A copy of a current utility bill, bank statement, government check, paycheck;

(c) A copy of a government-issued document; or

(d) A copy of any other official document, including leases or residential rental agreements, occupancy statements from homeless shelters, or tuition or housing bills from colleges or universities.

1605 FILING PETITIONS

1605.1 Before the nominating petition is filed, all sheets which comprise the petition shall be assembled and serially numbered.

1605.2 The nominating petition and supporting affidavits, as well as the candidate's Declaration of Candidacy as required pursuant to Chapter 6 of this title, shall be

filed in-person at the Board's office no later than 5:00 p.m. on the 90th day preceding the election ("petition filing deadline"). Any candidate may file petition supplements prior to the petition-filing deadline, provided that the supplements are accompanied by an affidavit executed by the person filing them. All petitions and supplements shall be received by the Executive Director or his or her designee if filed on or before the petition-filing deadline.

1605.3 Within three (3) business days following the petition-filing deadline, the Executive Director or his or her designee shall issue a preliminary determination of petition sufficiency. In order to be determined sufficient, a petition nominating a candidate shall:

(a) Contain the minimum statutory number of signatures required to obtain ballot access for the office sought;

(b) Be accompanied by an affidavit executed by the person filing the petition, attesting that to the best of his or her knowledge, the petition is complete and contains the legally required number of valid signatures; and

(c) Be on a form issued by the Executive Director or his or her designee in accordance with the rules of this chapter;

1605.4 In determining whether the minimum statutory number of signatures is contained in the nominating petition, the Executive Director or his or her designee shall not count any signatures submitted on petition pages that fail to include a completed circulator's affidavit or any signatures of registered voters who submitted a written notarized request to disallow the voter's signature from being counted on the petition; provided, that the request shall be received prior to the time the petition is filed.

1605.5 Notice of the Executive Director's preliminary determination of petition sufficiency shall be served immediately by email or first-class mail upon each candidate.

1605.6 In the event that it is determined that a candidate's nominating petition is insufficient, the candidate's nominating petition shall nevertheless be posted for the challenge period specified in D.C. Official Code § 1-1001.08(o) (2011 Repl.), along with the Executive Director's preliminary determination.

1605.7 Within three (3) days of issuing a notice of an adverse determination, a candidate aggrieved by the decision may file a written notice of appeal with the Board, duly signed by the candidate and specifying concisely the grounds for appeal.

1605.8 The Board shall hold a hearing on the appeal within three (3) days after receipt of the appeal notice.

1605.9 The hearing shall be conducted in accordance with the procedures provided in the District of Columbia Administrative Procedure Act, D.C. Official Code §§ 2-501 *et seq*. (2011 Repl.), and may be heard by a one-member panel (D.C. Official Code § 1-1001.05(g) (2011 Repl.)).

1605.10 Any appeal from a decision of a one-member panel to the full Board shall be taken in the manner prescribed by D.C. Official Code § 1-1001.05(g) (2011 Repl.); however, in no case shall the time allowed for the appeal exceed fourteen (14) calendar days from the date of decision of the one-member panel.

1606 PETITION CHALLENGES

1606.1 The Executive Director or his or her designee shall post nominating petitions, or facsimiles thereof, in the Board's office for public inspection and opportunity for challenge for ten (10) days, including Saturdays, Sundays, and holidays, beginning on the third (3rd) calendar day after the petition-filing deadline required by law.

1606.2 Except as provided in this section, the Board shall adjudicate the validity of each properly filed challenge in accordance with the procedures prescribed in Chapter 4 of this title. A challenge is properly filed if it:

(a) Cites the alleged signature or circulator requirement defects, as set forth in the signature validity rules of this chapter, by line and page;

(b) Is signed and submitted in-person at the Board's office by a qualified elector within the ten (10)-day posting period; and

(c) Alleges the minimum number of signature defects which, if valid, would render the prospective candidate ineligible for ballot access.

1606.3 Within three (3) working days of receipt of a properly filed challenge, the General Counsel or his or her designee shall serve a copy of the challenge upon the candidate in-person, by first-class mail, or email.

1606.4 After the receipt of a properly filed challenge, the Board's staff shall search the Board's registration records to prepare a recommendation to the Board as to the validity of the challenge. The scope of the search shall be limited to matters raised in the challenge. In the event Board staff discovers a fatal defect either on the face of a petition or pursuant to a record search concerning a specific allegation or challenge, the Board may, on its own motion, declare any signature(s) invalid, notwithstanding the defect was not alleged or challenged; alternatively, the Board, in its discretion, may waive any formal error.

1606.5 The Board shall receive evidence in support of and in opposition to the challenge and shall rule on the validity of the challenge no more than twenty (20) days after the challenge has been filed. The Board shall consider any other evidence as may be submitted, including but not limited to, documentary evidence, affidavits, and oral testimony.

1606.6 The Board, in view of the fact that it shall hear and determine the validity of the challenge within a limited time, may limit examination and cross-examination of witnesses to the following:

(a) Objections and specifications of such objections, if any, to the nominating petition; and

(b) Objections and specifications of such objections, if any, to the petition challenge.

1606.7 Based upon the evidence received, the Board shall either reject or uphold the challenge, and accordingly grant or deny ballot access to the candidate whose petition was challenged.

1606.8 If a one (1)-member Board panel makes a determination on the validity of a challenge, either the challenger or any person named in the challenged petition as a nominee may apply to either the full Board or the District of Columbia Court of Appeals for a review of such determination within three (3) days after the announcement of the one (1)-member panel determination; provided that any appeal to the full Board must be made in time to permit the Board to resolve the matter by no later than twenty (20) days after the challenge has been filed. An appeal from a full Board determination to the Court of Appeals shall be made within three (3) days.

1606.9 If at the expiration of the challenge period referred to in this section, no challenge has been filed with respect to a nominating petition, the Executive Director, or his or her designee, shall certify the candidate, and the candidate's name shall be printed on the ballot.

1607 VALIDITY OF SIGNATURES

1607.1 Once a nominating petition has been challenged pursuant to this chapter, a signature shall not be counted as valid in any of the following circumstances:

(a) The signer's voter registration was designated as inactive on the voter roll at the time the petition was signed;

(b) The signer, according to the Board's records, is not registered to vote at the address listed on the petition at the time the petition was signed; provided that an address on a petition which is different

than the address which appears on the Board's records shall be deemed valid if the signer's current address is within boundary from which the candidate seeks nomination, and the signer files a change of address form with the Board during the first 10 days following the date on which a challenge to the nominating petition is filed.

(c) The signature is a duplicate of a valid signature;

(d) The signature is not dated;

(e) The petition does not include the address of the signer;

(f) The petition does not include the name of the signer where the signature is not sufficiently legible for identification;

(g) The circulator of the petition sheet was not a qualified petition circulator at the time the petition was signed;

(h) The circulator of the petition failed to complete all required information in the circulator’s affidavit;

(i) The signature is not made by the person whose signature it purports to be, provided that registered voters who are unable to sign their names may make their marks in the space for signature. These marks shall not be counted as valid signatures unless the persons witnessing the marks shall attach to the petition affidavits that they explained the contents of the petitions to the signatories and witnessed their marks;

(j) Reserved;

(k) Reserved;

(l) Reserved;

(m) The signer is not a registered voter in the ward or Single-Member District from which the candidate seeks nomination at the time the petition was signed; or

(n) On a petition to nominate a candidate in a primary election, the signer is not registered to vote in the same party as the candidate at the time the petition is signed.

1608 WRITE-IN NOMINATION

1608.1 Write-in nominations for any of the offices described in this chapter shall be permitted for any election. Affirmation of the write-in nominee's candidacy shall proceed in accordance with the provisions of Chapter 6 of this title.

Chapter 17 of Title 3 of the District of Columbia Municipal Regulations (DCMR) is amended in its entirety to read as follows:

CHAPTER 17 CANDIDATES: MEMBERS AND OFFICIALS OF LOCAL COMMITTEES OF POLITICAL PARTIES AND NATIONAL COMMITTEE PERSONS

1700 GENERAL PROVISIONS
1701 SLATES: FORMATION, AMENDMENT AND WITHDRAWAL
1702 PETITION FORM
1703 SIGNATURE REQUIREMENTS
1704 NON-RESIDENT CIRCULATORS
1705 FILING PETITIONS
1706 PETITION CHALLENGES
1707 VALIDITY OF SIGNATURES
1708 WRITE-IN NOMINATION

1700 GENERAL PROVISIONS

1700.1 This chapter governs:

(a) The process by which the local committee of each major party may request that elections for its members and officials be held; and

(b) The process by which candidates for nomination for members and officials of local party committees, and for national party committeemen and committeewomen, seek ballot access during a regularly scheduled primary and the process by which candidates for party office seek nomination.

1700.2 For purposes of this chapter, unless otherwise provided, the following terms shall be defined as follows:

(a) The term "major party" means an authorized political party which is qualified to hold a party primary for partisan offices pursuant to D.C. Official Code § 1-1001.08 (h)(2);

(b) The term "qualified petition circulator" means an individual who is:

(1) At least 18 years of age; and

(2) Either a resident of the District of Columbia, or a resident of another jurisdiction who has registered as a petition circulator with the Board in accordance with this chapter.

(c) The term "slate" means a list of candidates that have qualified for ballot access and indicated the intent to be recognized as a group on the ballot by filing a Slate Registration Form on a form provided by the Board. Slates may be comprised of:

(1) Two (2) or more individual candidates who have qualified for ballot access by filing separate nominating petitions;

(2) A group of candidates who have qualified for ballot access by filing a single nominating petition; or

(3) A combination of individual candidates or groups of candidates who have qualified for ballot access by filing separate nominating petitions.

1700.3 The chairperson of each local party committee shall indicate the party's intention to elect officials or committee members by a letter signed by the chairperson and filed with the Board no later than one hundred eighty (180) days before the date of a primary election ("party plan"), pursuant to D.C. Official Code § 1-1001.08 (l)(l) (2011 Repl.). The letter shall specify the number and titles of its officers or committee members to be elected at-large and by ward.

1701 SLATES: FORMATION, AMENDMENT, AND WITHDRAWAL

1701.1 In order to achieve ballot access as a slate, the prospective members of the slate must file in-person at the Board's office a "Statement of Slate Registration," on a form provided by the Board, no later than 4:45 p.m. on the third (3rd) day after the deadline for filing petitions.

1701.2 The Statement of Slate Registration shall contain the following:

(a) The name, address, telephone number and signature of the individual who is authorized to represent the slated candidates in matters before the Board ("authorized slate representative");

(b) A complete listing of the candidates who are members of the slate and the office to which each seeks election;

(c) A statement that each candidate gives his or her permission to be identified as a member of the slate;

(d) The slate name, which shall be sufficiently concise to permit the Board to print the name on the ballot on the same line with each candidate's name; and

(e) The signatures and printed name of each of the candidates who are members of the slate; provided, that where candidates have qualified as a group, using a single nominating petition, all candidates listed on the petition must be signatories.

1701.3 Additions to slate composition or changes of slate names may be filed with the Board by the authorized slate representative as amendments to the original Statement of Slate Registration.

1701.4 Amendments to the original Statement of Slate Registration shall be filed in-person at the Board's office by the authorized slate representative and shall be on a form provided by the Board which shall contain the following:

(a) The requested amendment(s);

(b) The signature of the authorized slate representative; and

(c) The signature(s) of any additional slate candidate(s), if applicable.

1701.5 Any candidate or a group of candidates that qualified for the ballot by filing a single nominating petition, may withdraw from a registered slate by filing in-person at the Board's office a Statement of Slate Withdrawal.

1701.6 The Statement of Slate Withdrawal shall contain the following:

(a) A statement that the individual candidate or group of candidates irrevocably withdraws from the slate;

(b) The signatures of each withdrawing candidate; and

(c) The signatures of all candidates listed on the petition; provided, that the candidate(s) seeking withdrawal qualified by using a single nominating petition.

1701.7 Slated candidates shall not be disqualified from the ballot for any of the following reasons:

(a) Where a candidate has withdrawn from a slate;

(b) Where a candidate has withdrawn from the ballot; or

(c) Where any candidate or a group of candidates, have been determined, by the Executive Director or his or her designee, to be ineligible to qualify as part of a slate.

1701.8 Amendments and Statements of Slate Withdrawals shall be filed in-person at the Board's office no later than 4:45 p.m. on the third (3rd) day after the deadline for filing nominating petitions.

1702 PETITION FORM

1702.1 A nominating petition form shall be separately prepared and issued by the Executive Director or his or her designee for each candidate seeking nomination, or group of candidates seeking nomination as a slate, for office.

1702.2 Nominations for the offices of members and officials of local party committees elected at-large may be on one nominating petition.

1702.3 Nominations for the offices of members and officials of local party committees, to be elected in a single ward, may be on one nominating petition; Provided, that all the candidates stand for office only in the same ward.

1702.4 Nominations for the offices of national committeeman, national committeewoman, and the alternates may be on one nominating petition; provided, that no individual is nominated for two (2) or more offices that could not be occupied simultaneously by the same person.

1702.5 The first page of the petition shall contain the following information:

(a) The name, address, and political party of the candidate(s), the ward (where applicable), and the office(s) to which the candidate(s) seek election;

(b) A statement that all of the signatories to this petition must be of the same political party as the candidate(s); and

(c) If the candidate is running from a ward, a statement that all of the signatories to the petition must be registered in and residents of the ward from which the candidate seeks election.

1702.6 The second page of the petition shall include a circulator's affidavit, providing space for the circulator of a nominating petition to record his or her name, address, and telephone number. By signing the affidavit, the circulator swears under oath or affirms that he or she:

(a) Is a qualified petition circulator;

(b) Personally circulated the petition sheet;

(c) Personally witnessed the signing of each signature on the petition sheet; and

(d) Inquired whether each signer is a registered voter in the same political party and ward, where applicable, as the candidate seeking nomination.

1702.7 No nominating petition shall be issued to any person other than the candidate, or the authorized slate representative, unless the Board receives written notice from the candidate or slate representative which authorizes the Board to release petitions in his or her name. The authorization shall include the following:

(a) Candidate's name;

(b) Office which the candidate seeks; and

(c) Candidate or slate representative's signature.

1702.8 No nominating petition shall be issued unless all "blank" spaces in the candidate(s) name section of each petition sheet are stricken such that no additional names may be appended to the petition page after it has been issued.

1703 SIGNATURE REQUIREMENTS

1703.1 To obtain ballot access, a candidate's petition for the office of national committee person shall contain a total of at least one percent (1%) or five hundred (500) signatures of persons who are duly registered in the same political party as the candidate, whichever is less.

1703.2 To obtain ballot access, a candidate's petition for the office of member or officer of a local party committee elected at-large shall contain a total of at least one percent (1%) or five hundred (500) signatures of persons who are duly registered in the same political party as the candidate, whichever is less.

1703.3 To obtain ballot access, a candidate's petition for the office of member or officer of a local party committee elected from a ward shall contain a total of at least one percent (1%) or one hundred (100) signatures of persons who are duly registered in the same ward and political party as the candidate, whichever is less.

1704 NON-RESIDENT CIRCULATORS

1704.1 Each petition circulator who is not a resident of the District of Columbia shall, prior to circulating a petition, complete and file in-person at the Board's office a Non-Resident Petition Circulator Registration Form in which he or she:

(a) Provides the name of (and office sought by) the candidate in support of which he or she will circulate the petition;

(b) Provides his or her name, residential address, telephone number, and email address;

(c) Swears or affirms that he or she is at least eighteen (18) years of age;

(d) Acknowledges that he or she has received from the Board information regarding the rules and regulations governing the applicable petition circulation process, and that he or she will adhere to such rules and regulations;

(e) Consents to submit to the Board's subpoena power and to the jurisdiction of the Superior Court of the District of Columbia for the enforcement of Board subpoenas.

1704.2 Each non-resident petition circulator shall present proof of residence to the Board at the time he or she files the Non-Resident Petition Circulator Registration Form. Valid proof of residence is any official document showing the circulator's name and residence address. Acceptable forms of proof of residence include:

(a) A copy of a current and valid government-issued photo identification;

(b) A copy of a current utility bill, bank statement, government check, paycheck;

(c) A copy of a government-issued document; or

(d) A copy of any other official document, including leases or residential rental agreements, occupancy statements from homeless shelters, or tuition or housing bills from colleges or universities.

1705 FILING PETITIONS

1705.1 Before the nominating petition is filed, all sheets which comprise the petition shall be assembled and serially numbered.

1705.2 The nominating petition and supporting affidavits, as well as each candidate's Declaration of Candidacy as required pursuant to Chapter 6 of this title, shall be filed in-person at the Board's office no later than 5:00 p.m. on the 90th day preceding the election ("petition-filing deadline"). Any candidate may file petition supplements prior to the petition-filing deadline, provided that the

supplements are accompanied by an affidavit executed by the person filing them. All petitions and supplements shall be received by the Executive Director or his or her designee if filed on or before the petition-filing deadline.

1705.3 Within three (3) business days following the petition-filing deadline, the Executive Director or his or her designee shall issue a preliminary determination of petition sufficiency. In order to be determined sufficient, a petition nominating a candidate shall:

(a) Contain the minimum statutory number of signatures required to obtain ballot access for the office sought;

(b) Be accompanied by an affidavit executed by the person filing the petition, attesting that to the best of his or her knowledge, the petition is complete and contains the legally required number of valid signatures; and

(c) Be on a form issued by the Executive Director or his or her designee in accordance with the rules of this chapter.

1705.4 In determining whether the minimum statutory number of signatures is contained in the nominating petition, the Executive Director or his or her designee shall not count any signatures submitted on petition pages that fail to include a completed circulator's affidavit or any signatures of registered voters who submitted a written notarized request to disallow the voter's signature from being counted on the petition; provided, that the request shall be received prior to the time the petition is filed.

1705.5 Notice of the Executive Director's preliminary determination of petition sufficiency shall be served immediately by email or first-class mail upon each candidate.

1705.6 In the event that it is determined that a candidate's nominating petition is insufficient, the candidate's nominating petition shall nevertheless be posted for the challenge period specified in D.C. Official Code sec. 1-1001.08 (o) (2011 Repl.), along with the Executive Director's preliminary determination.

1705.7 Within three (3) days of issuing a notice of an adverse determination, a candidate aggrieved by the decision may file a written notice of appeal with the Board, duly signed by the candidate and specifying concisely the grounds for appeal.

1705.8 The Board shall hold a hearing on the appeal within three (3) days after receipt of the appeal notice.

1705.9 The hearing shall be conducted in accordance with the procedures provided in the District of Columbia Administrative Procedure Act, D.C. Official Code §§ 2-501

et seq. (2011 Repl.), and may be heard by a one-member panel (D.C. Official Code § 1-1001.05(g) (2011 Repl.)).

1705.10 Any appeal from a decision of a one-member panel to the full Board shall be taken in the manner prescribed by D.C. Official Code § 1-1001.05(g) (2011 Repl.); however, in no case shall the time allowed for the appeal exceed fourteen (14) calendar days from the date of decision of the one-member panel.

1706 PETITION CHALLENGES

1706.1 The Executive Director or his or her designee shall post nominating petitions, or facsimiles thereof, in the Board's office for public inspection and opportunity for challenge for ten (10) days, including Saturdays, Sundays, and holidays beginning on the third (3rd) calendar day after the petition-filing deadline required by law.

1706.2 Except as provided in this section, the Board shall adjudicate the validity of each properly filed challenge in accordance with the procedures prescribed in chapter 4 of this title. A challenge is properly filed if it:

(a) Cites the alleged signature or circulator requirement defects, as set forth in the signature validity rules of this chapter, by line and page;

(b) Is signed and submitted in-person at the Board's office by a qualified elector within the ten (10)-day posting period; and

(c) Alleges the minimum number of signature defects which, if valid, would render the prospective candidate ineligible for ballot access.

1706.3 Within three (3) working days of receipt of a properly filed challenge, the General Counsel or his or her designee shall serve a copy of the challenge upon the candidate in-person, by first-class mail, or email.

1706.4 After the receipt of a properly filed challenge, the Board's staff shall search the Board's permanent registration records to prepare a recommendation to the Board as to the validity of the challenge. The scope of the search shall be limited to matters raised in the challenge. In the event Board staff discovers a fatal defect either on the face of a petition or pursuant to a record search concerning a specific allegation or challenge, the Board may, on its own motion, declare any signature(s) invalid, notwithstanding the defect was not alleged or challenged; alternatively, the Board, in its discretion, may waive any formal error.

1706.5 The Board shall receive evidence in support of and in opposition to the challenge and shall rule on the validity of the challenge no more than twenty (20) days after the challenge has been filed. The Board shall consider any other evidence as may

be submitted, including but not limited to, documentary evidence, affidavits, and oral testimony.

1706.6 The Board, in view of the fact that it shall hear and determine the validity of the challenge within a limited time, may limit examination and cross-examination of witnesses to the following:

(a) Objections and specifications of such objections, if any, to the nominating petition; and

(b) Objections and specifications of such objections, if any, to the petition challenge.

1706.7 Based upon the evidence received, the Board shall either reject or uphold the challenge, and accordingly grant or deny ballot access to the candidate whose petition was challenged.

1706.8 If a one (1)-member Board panel makes a determination on the validity of a challenge, either the challenger or any person named in the challenged petition as a nominee may apply to either the full Board or the District of Columbia Court of Appeals for a review of such determination within three (3) days after the announcement of the one (1)-member panel determination; provided that any appeal to the full Board must be made in time to permit the Board to resolve the matter by no later than twenty (20) days after the challenge has been filed. An appeal from a full Board determination to the Court of Appeals shall be made within three (3) days.

1706.9 If at the expiration of the challenge period referred to in this section, no challenge has been filed with respect to a nominating petition, the Executive Director, or his or her designee, shall certify the candidate, and the candidate's name shall be printed on the ballot.

1707 VALIDITY OF SIGNATURES

1707.1 Once a nominating petition has been challenged pursuant to this chapter, a signature shall not be counted as valid in any of the following circumstances:

(a) The signer's voter registration was designated as inactive on the voter roll at the time the petition was signed;

(b) The signer, according to the Board's records, is not registered to vote at the address listed on the petition at the time the petition was signed; provided that an address on a petition which is different than the address which appears on the Board's records shall be deemed valid if the signer's current address is within the boundary from which the candidate seeks nomination, and the signer files a

change of address form with the Board during the first 10 days following the date on which a challenge to the nominating petition is filed.

(c) The signature is a duplicate of a valid signature;

(d) The signature is not dated;

(e) The petition does not include the address of the signer;

(f) The petition does not include the name of the signer where the signature is not sufficiently legible for identification;

(g) The circulator of the petition sheet was not a qualified petition circulator at the time the petition was signed;

(h) The circulator of the petition failed to complete all required information in the circulator's affidavit;

(i) The signature is not made by the person whose signature it purports to be; provided that registered voters who are unable to sign their names may make their marks in the space for signature. These marks shall not be counted as valid signatures unless the persons witnessing the marks shall attach to the petition affidavits that they explained the contents of the petitions to the signatories and witnessed their marks;

(j) Reserved;

(k) Reserved;

(l) Reserved;

(m) The signer is not a registered voter in the ward from which the candidate seeks nomination at the time the petition was signed; or

(n) The signer is not registered to vote in the same party as the candidate at the time the petition is signed.

1708 WRITE-IN NOMINATION

1708.1 Write-in nominations are permitted, subject to the party's plan submitted to the Board pursuant to this chapter. If permitted, affirmation of the write-in nominee's candidacy shall proceed in accordance with the provisions of Chapter 6 of this title.

Chapter 20 of Title 3 of the District of Columbia Municipal Regulations (DCMR) is amended in its entirety to read as follows:

CHAPTER 20 FREEDOM OF INFORMATION

2000 PURPOSE AND APPLICATION
2001 BOARD RESPONSIBILITY
2002 REQUESTS FOR RECORDS
2003 RESERVED
2004 RESERVED
2005 TIME LIMITATIONS
2006 EXEMPTIONS
2007 RESPONSES TO REQUESTS
2008 FEES
2009 RESERVED
2010 RESERVED
2011 RESERVED
2012 REVIEW OF DENIALS
2013 RECORDS MAINTAINED BY THE BOARD
2014 RESERVED
2015 RESERVED
2016 RESERVED
2017 RESERVED

2000 PURPOSE AND APPLICATION

2000.1 This chapter contains the rules and procedures to be followed by the District of Columbia Board of Elections (hereinafter "the Board") in implementing the Freedom of Information Act, D.C. Law 1-96, 23 DCR 3744 (1977)("the Act").

2000.2 Employees may continue to furnish to the public, informally and without compliance with these procedures, information and records which they customarily furnish in the regular performance of their duties prior to enactment of the Act.

2000.3 The policy of the Board is one of full and responsible disclosure of its identifiable records consistent with the provisions of the Act. All records not exempt from disclosure shall be made available. Moreover, records exempt from mandatory disclosure shall be made available as a matter of discretion when disclosure is not prohibited by law or is not against the public interest.

2001 BOARD RESPONSIBILITY

2001.1 The General Counsel is the information officer of the Board and has the authority to grant and deny requests for Board records.

2002 REQUESTS FOR RECORDS

2002.1 A request for a record of the Board must be made in writing and shall be directed to the General Counsel.

2002.2 A written request may be mailed, faxed or e-mailed to the General Counsel. The outside of the envelope or the subject line of the fax or e-mail shall state: "Freedom of Information Act Request" or "FOIA Request". In addition, a request shall include a daytime telephone number, e-mail address, or mailing address for the requester.

2002.3 A request shall reasonably describe the desired record. Where possible, specific information requesting dates, files, titles, file designation or other specific information, shall be supplied.

2002.4 Where the information supplied by the requester is not sufficient to permit the identification and location of the record by the Board without an unreasonable amount of effort, the requester shall be contacted and asked to supply the necessary information. Every reasonable effort shall be made by the Board to assist in the identification and location of requested records.

2003 RESERVED

2004 RESERVED

2005 TIME LIMITATIONS

2005.1 Within the time prescribed in the Act, the Board shall determine whether to comply with or to deny the request and shall dispatch its determination to the requester, unless an extension is made pursuant to §§ 2005.2 and 2005.3.

2005.2 In unusual circumstances as specified in § 2005.3, the Board may extend the time for initial determination on a request up to the time prescribed in the Act.

2005.3 Extensions shall be made by written notice to the requester which sets forth the reason for the extension and the date on which a determination is expected. As used in this section "unusual circumstances" means, but only to the extent necessary to the proper processing of the request, either of the following:

(a) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(b) The need for consultation with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

2005.4 If no determination has been dispatched at the end of the applicable time limit, or the extension thereof, the requester may deem his request denied, and exercise a right to appeal in accordance with § 2012.1.

2005.5 When no determination can be dispatched within the applicable time limit, the Board shall nevertheless continue to process the request. On expiration of the time limit the Board shall inform the requester of the reason for the delay, of the date on which a determination may be expected, and of his right to treat the delay as a denial and of the appeal rights provided by the Act. The Board may ask the requester to forego appeal until a determination is made.

2005.6 For purposes of this chapter, a request is deemed received when the General Counsel receives the request submitted in compliance with the Act and this chapter. When the General Counsel, pursuant to § 2002.5, contacts the requester for additional information, then the request is deemed received when the General Counsel receives the additional information.

2006 EXEMPTIONS

2006.1 No requested record shall be withheld from inspections or copying unless both of the following criteria apply:

(a) It comes within one of the classes of records exempted pursuant to D.C. Official Code § 2-534 of the Act; and

(b) There is need in the public interest to withhold it.

2006.2 Any reasonably segregable portion of a record shall be provided to any person requesting the record after deletion of those portions which are exempt under this section.

2007 RESPONSE TO REQUESTS

2007.1 When a requested record has been identified and is available, the Board shall notify the requester as to where and when the record is available for inspection or copies will be available. The notification shall also advise the requester of any applicable fees.

2007.2 A response denying a written request for a record shall be in writing and shall include the following information:

(a) The identity of each person responsible for the denial, if different from that of the person signing the letter of denial;

(b) A reference to the specific exemption or exemptions authorizing the withholding of the record with a brief explanation of how each exemption applies to the record withheld. Where more than one

record has been requested and is being withheld, the foregoing information shall be provided for each record withheld; and

(c) A statement of the appeal rights provided by the Act.

2007.3 If a requested record cannot be located from the information supplied or is known to have been destroyed or otherwise disposed of, the requester shall be so notified.

2008 FEES

2008.1 Charges for services rendered in response to information requests shall be as follows (not to exceed a maximum search fee per request as may be imposed by applicable law):

(a) Searching for records, $4.00 per quarter hour, after 1st hour, by clerical personnel (DS 1 through 8);

(a-1) Searching for records, $7.00 per quarter hour after the 1st hour, by professional personnel (DS 9 through 13);

(b) Searching for records, $10.00 per quarter hour after the1st hour, by supervisory personnel (DS 14 and above);

(c) Copies made by photocopy machines... $ .25 per page;

(d) Charges for the initial review of documents, as permitted by applicable law, shall be assessed at the rate provided in subsections (a), (a-1), and (b) above.

2008.2 When a response to a request requires services or materials for which no fee has been established, the direct cost of the services or materials to the government may be charged, but only if the requester has been notified of the cost before it is incurred.

2008.3 Where an extensive number of documents are identified and collected in response to a request and the requester has not indicated in advance his willingness to pay fees as high as are anticipated for copies of the documents, the Board shall inform the requester that the documents are available for inspection and for subsequent copying at the established rate.

2008.4 A charge of one dollar ($1.00) shall be made for each certification of true copies of Board records.

2008.5 Search costs, not to exceed any dollar limitation prescribed by the Act for each request, may be imposed even if the requested record cannot be located. No fees shall be charged for examination and review by the Board to determine whether a record is subject to disclosure.

2008.6 To the extent permitted by applicable law, the Board shall require that fees as prescribed by these rules shall be paid in full prior to issuance of requested copies.

2008.7 Remittance shall be in the form either of a personal check or bank draft on a bank in the United States, a postal money order, or cash. Remittance shall be made payable to the order of the D.C. Treasurer and mailed or otherwise delivered to the General Counsel for the Board. The Board shall not assume responsibility for cash which is lost in the mail.

2008.8 A receipt for fees paid shall be given only upon request. No refund shall be made for services rendered.

2008.9 The Board may waive all or part of any fee when it is deemed to be either in the Board's interest or in the interest of the public.

2008.10 A requester seeking a waiver or reduction of fees shall provide a statement in his or her request letter explaining how the requested records will be used to benefit the general public.

2009 RESERVED

2010 RESERVED

2011 RESERVED

2012 REVIEW OF DENIALS

2012.1 When a request for records has been denied in whole or in part by the General Counsel, the requester may appeal the denial to the Mayor or may seek immediate judicial review of the denial in the Superior Court.

2012.2 Unless the Mayor otherwise directs, the Secretary shall act on behalf of the Mayor on all appeals under this section.

2012.3 An appeal to the Mayor shall be in writing. The appeal letter shall include "Freedom of Information Act Appeal" or "FOIA Appeal" in the subject line of the letter as well as marked on the outside of the envelope. The appeal shall be mailed to:

Mayor's Correspondence Unit
FOIA Appeal
1350 Pennsylvania Ave, NW
Suite 316
Washington, D.C. 20004

The requester shall forward a copy of the appeal to the General Counsel.

2012.4 An appeal to the Mayor shall include:

(a) Statement of the circumstances, reasons or arguments advanced in support of disclosure;

(b) Copy of the original request, if any;

(c) Copy of any written denial issued under § 2007.2; and

(d) Daytime telephone number, email address or mailing address for the requester.

2012.5 Within five (5) days (excluding Saturdays, Sundays, or legal public holidays) of receipt of its copy of the FOIA appeal, the General Counsel shall file a response with the Secretary. The response shall include the following documents:

(a) The justification for the decision not to grant review of records as requested, to the extent not provided in the letter of denial to the requester;

(b) Any additional documentation as may be necessary and appropriate to justify the denial, such as a Vaughn index of documents withheld, an affidavit or declaration of a knowledgeable official or employee testifying to the decision to withhold documents, or such other similar proof as the circumstances may warrant; and

(c) A copy of the public record or records in dispute on the appeal; provided, that if the public record or records are voluminous, the Board may provide a representative sample; and provided further, that if the public record contains personal, sensitive, or confidential information, the Board may redact such information from the copy furnished the Secretary in a manner that makes clear that the Board has made redactions.

2012.6 The Board may request additional time to file documentation required by § 2012.5 by filing a written or e-mailed request to the Secretary with a copy to the requester. The request for additional time must be filed within five (5) days (excluding Saturdays, Sundays, and legal public holidays) of receipt of the appeal. The Secretary will respond to the request for additional time with a copy to the requester.

2012.7 A written determination with respect to an appeal shall be made within ten (10) working days of the filing of the appeal.

2012.8 If the records, or any segregable part of thereof, are found to have been improperly withheld, the Mayor may order the Board to make them available. If the Board continues to withhold the records, the requester may seek enforcement of the order in the Superior Court.

2012.9 A denial in whole or in part of a request on appeal shall set forth the exemption relied upon, a brief explanation consistent with the purpose of the exemption of how the exemption applies to the records withheld, and the reasons for asserting it. The denial shall also inform the requester of the right of judicial review.

2012.10 If no determination has been dispatched at the end of the ten-day period, the requester may deem his request denied, and exercise his right to judicial review of the denial.

2013 RECORDS MAINTAINED BY THE BOARD

2013.1 The Board shall make and maintain records pertaining to each request for information, including copies or correspondence. The material shall be filed by individual request.

2013.2 The Board shall maintain a file, open to the public, which shall contain copies of all letters of denial.

2013.3 Where the release of the identity of the requester or other identifying details related to the request would constitute a clearly unwarranted invasion of personal privacy, the Board shall delete identifying details from the copies of the documents maintained in the public files.

2013.4 The Board shall also maintain records permitting annual reporting of the following information:

(a) Total number of requests made to the Board;

(b) The number of requests granted and denied, in whole or in part;

(c) The number of times each exemption was invoked as the basis for non- disclosure;

(d) The names and titles or positions of each person responsible for the denial of records and the number of instances each person was involved in a denial; and

(e) The amount of fees collected, and the amount of fees for duplication and search waived by the Board.

2013.5 On or before the 31st day of December of each calendar year, the Board shall compile and submit to the Secretary its report covering the fiscal year concluded

the preceding September 30th pursuant to the provisions of this section and on other matters relating to agency compliance with the terms of the Act.

2013.6 With respect to appeals taken pursuant to § 2012, the Secretary shall maintain records reflecting the number of appeals taken, the results of the appeals, and the number of times each exemption was invoked as a basis for non-disclosure.

2014 RESERVED

2015 RESERVED

2016 RESERVED

2017 RESERVED

All persons desiring to comment on the subject matter of this proposed rulemaking should file written comments by no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with the Office of the General Counsel, Board of Elections, 441 4th Street, N.W., Suite 270N, Washington, D.C. 20001. Please direct any questions or concerns to the Office of the General Counsel at 202-727-2194 or ogc@dcboee.org. Copies of the proposed rules may be obtained at cost from the above address, Monday through Friday, between the hours of 9:00 a.m. and 4:00 p.m.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2013-217
November 15, 2013

SUBJECT: Designation of Special Event Areas for D.C. Health Link Open Enrollment Fair

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(11) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(11) (2012 Repl.), and pursuant to 19 DCMR § 1301.8, it is hereby **ORDERED** that:

1. On Saturday, November 23, 2013, the following public space areas shall be designated as Special Event Areas to accommodate activities associated with the D.C. Health Link Open Enrollment Fair:

   a. Commencing at 6:00 a.m. and continuing until 6:00 p.m., the 900 Block of G Street, N.W. shall be closed to all vehicular traffic; and

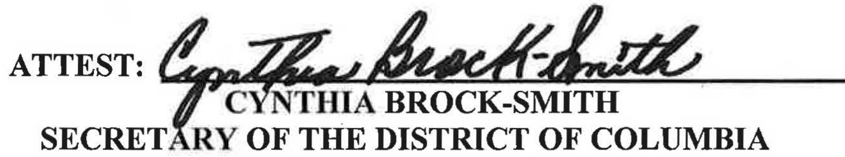
   b. Commencing at 6:00 a.m. and continuing until 6:00 p.m., the curbside lanes of the 700 Block of 10th Street, N.W. shall be closed to vehicular traffic.

2. The designated areas shall be operated and overseen by the D.C. Health Benefit Exchange Authority.

3. This Order is authorization for the use of the designated streets and curb lanes only, and the named operator shall secure and maintain all other licenses and permits applicable to the activities associated with the operation of the event. All building, health, life, safety, and use of public space requirements shall remain applicable to the Special Event Areas designated by this Order.

4. **EFFECTIVE DATE:** This Order shall become effective immediately.

VINCENT C. GRAY
MAYOR



ATTEST:
CYNTHIA BROCK-SMITH
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2013-218
November 18, 2013

SUBJECT: Reappointments – District of Columbia Education Licensure Commission

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2012 Repl.), and in accordance with section 4 of the Education Licensure Commission Act of 1976, effective April 6, 1977, D.C. Law 1-104, D.C. Official Code § 38-1304 (2012 Repl.), it is hereby **ORDERED** that:

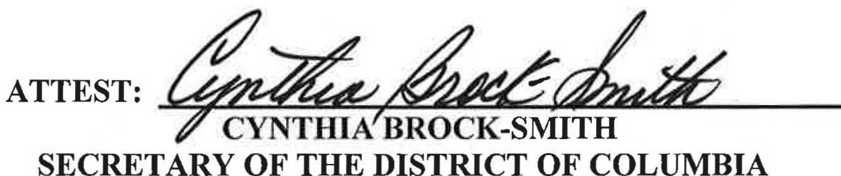
1. The following individuals are reappointed as members of the District of Columbia Education Licensure Commission for a term to end August 15, 2016:

   JOHNETTA DAVIS
   DR. GAILDA DAVIS

2. **EFFECTIVE DATE:** This Order shall be effective *nunc pro tunc* to August 15, 2013.

VINCENT C. GRAY
MAYOR

ATTEST:



CYNTHIA BROCK-SMITH
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2013-219
November 19, 2013

SUBJECT: Appointment – Interim Commissioner, Department of Insurance, Securities, and Banking

ORIGINATING AGENCY: Office of the Mayor

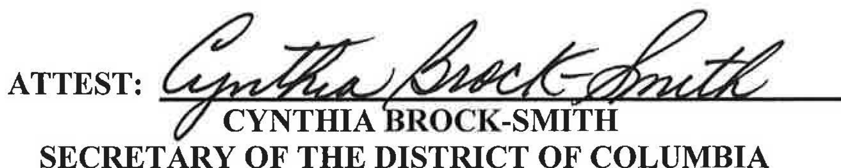
By virtue of the authority vested in me as Mayor of the District of Columbia pursuant to section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2012 Repl.), it is hereby **ORDERED** that:

1. **CHESTER MCPHERSON** is appointed Interim Commissioner of the Department of Insurance, Securities, and Banking and shall serve in that capacity at the pleasure of the Mayor.

2. This Order supersedes Mayor's Order 2012-10, dated January 20, 2012.

3. **EFFECTIVE DATE:** This Order shall be effective *nunc pro tunc* to November 15, 2013.

VINCENT C. GRAY
MAYOR

ATTEST: 

CYNTHIA BROCK-SMITH
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2013-220
November 19, 2013

SUBJECT: Appointment – Board of Nursing

ORIGINATING AGENCY: Office of the Mayor

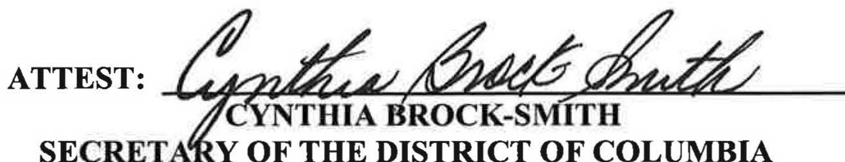
By virtue of the authority vested in me as Mayor of the District of Columbia pursuant to section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2012 Repl.), and in accordance with section 204 of the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986, D.C. Law 6-99, D.C. Official Code § 3-1202.04 (2012 Repl.), which established the Board of Nursing ("Board"), it is hereby **ORDERED** that:

1. **MAMIE MESFIN-PRESTON,** whose nomination was submitted by the Mayor on May 20, 2013 and was deemed approved by the Council of the District of Columbia pursuant to Proposed Resolution 20-0288 on July 7, 2013, is appointed as a Registered Nurse member of the Board, replacing Rachel Mitzner, for a term to end July 21, 2016.

2. **EFFECTIVE DATE:** This Order shall become effective immediately.

VINCENT C. GRAY
MAYOR

ATTEST:



CYNTHIA BROCK-SMITH
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2013-221
November 20, 2013

SUBJECT: Delegation of Authority to Enter into Agreements with Washington Metropolitan Area Transit Authority

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(6) and (11) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(6) and (11) (2012 Repl.), it is hereby **ORDERED** that:

I. PURPOSE AND SCOPE

The purpose of this Order is to facilitate programs within the authority of the District of Columbia Taxicab Commission ("DCTC") by delegating to the DCTC Mayoral authority to enter into agreements with the Washington Metropolitan Area Transit Authority ("WMATA").

II. REQUIREMENTS

DCTC is hereby delegated the authority vested in me as Mayor of the District of Columbia by section 6032 of the Fiscal Year 2013 Budget Support Act of 2012, effective September 20, 2012, D.C. Law 19-168, 59 DCR 8025 (July 6, 2012), to enter into agreements with WMATA to facilitate programs within DCTC's authority under the District of Columbia Taxicab Commission Establishment Act of 1985, effective March 25, 1986, D.C. Law 6-97, D.C. Official Code §§ 50-301 *et seq.* (2012 Repl.), as amended by the Taxicab Service Improvement Amendment Act of 2012, D.C. Law 19-0184, 59 DCR 9431 (August 10, 2012), and the Public Vehicle-for-Hire Innovation Amendment Act of 2012, D.C. Law 19-0270, 60 DCR 1717 (February 15, 2013).

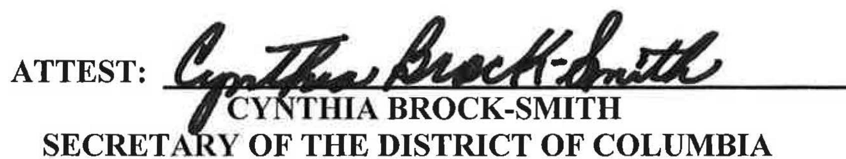
III. INCONSISTENT ORDERS SUPERSEDED

This order shall supersede all pre-existing Orders to the extent of any inconsistency.

IV. EFFECTIVE DATE

This Order shall become effective immediately.

VINCENT C. GRAY
MAYOR

ATTEST: 
CYNTHIA BROCK-SMITH
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2013-222
November 20, 2013

SUBJECT: Appointment – Chairperson, Board of Nursing

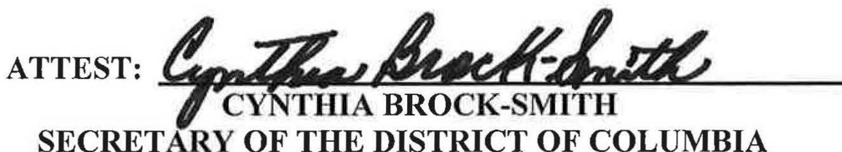
ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2012 Repl.), and in accordance with section 204 of the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986, D.C. Law 6-99, D.C. Official Code § 3-1202.04 (2012 Repl.), it is hereby **ORDERED** that:

1. **CATHY BORRIS-HALE** is designated as Chairperson of the Board of Nursing, replacing Mary Ellen R. Husted, and shall serve in that capacity at the pleasure of the Mayor.

2. **EFFECTIVE DATE:** This Order shall become effective immediately.

VINCENT C. GRAY
MAYOR

ATTEST: 

CYNTHIA BROCK-SMITH
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2013-223
November 21, 2013

SUBJECT: Appointment – Task Force to Combat Fraud

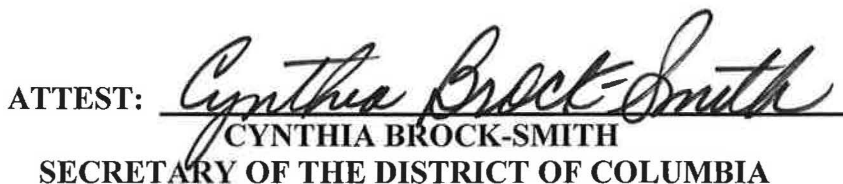
ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia pursuant to section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2012 Repl.), and in accordance with section 126m of the District of Columbia Theft and White Collar Crimes Act of 1982, effective June 8, 2001, D.C. Law 4-164, D.C. Official Code § 22-3226.13 (2012 Repl.), and Mayor's Order 2013-096, dated May 17, 2013, which established the Task Force to Combat Fraud ("Task Force"), it is hereby **ORDERED** that:

1. **WILFREDO MANLAPAZ** is appointed as a member of the Task Force, representing the Metropolitan Police Department, replacing Brian Harris, and shall serve in that capacity at the pleasure of the Mayor.

2. **EFFECTIVE DATE:** This Order shall become effective immediately.

VINCENT C. GRAY
MAYOR

ATTEST: 

CYNTHIA BROCK-SMITH
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2013-224
November 21, 2013

SUBJECT: Appointments – Walter Reed Army Medical Center Site Reuse Advisory Committee

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2012 Repl.), and in accordance with the Walter Reed Army Medical Center Community Advisory Committee Congressional Review Emergency Amendment Act of 2013, signed by the Mayor on October 17, 2013, D.C. Act 20-204, 60 DCR 15341 (November 8, 2013), and the Walter Reed Army Medical Center Community Advisory Committee Amendment Act of 2013, signed by the Mayor on August 28, 2013, D.C. Act 20-157, 60 DCR 12472 (September 6, 2013), it is hereby **ORDERED** that:

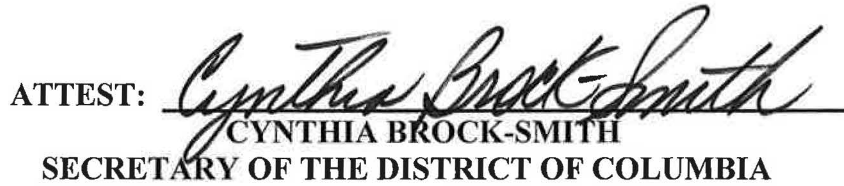
1. **MARGARET SINGLETON** is appointed as a community member, from the Brightwood community, to the Walter Reed Army Medical Center Site Reuse Advisory Committee ("Committee"), and shall serve in that capacity at the pleasure of the Mayor.

2. **LEILA BATTIES** is appointed as a community member, from the Shepherd Park community, to the Committee, and shall serve in that capacity at the pleasure of the Mayor.

3. **AVRAM FECHTER** is appointed as a community member, from the Takoma community, to the Committee, and shall serve in that capacity at the pleasure of the Mayor.

4. **EFFECTIVE DATE:** This Order shall become effective immediately.

VINCENT C. GRAY
MAYOR



ATTEST: **CYNTHIA BROCK-SMITH**
SECRETARY OF THE DISTRICT OF COLUMBIA

APPLETREE PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

AppleTree Early Learning Public Charter School is seeking bids from prospective candidates to provide the following services:

1. **Accounting, Budgeting, and Financial Reporting:** Please contact Rita Hagel, Chief Operating Officer, for details on the RFP. The deadline for responding to the RFP is November 29, 2013 at 4pm. Contact - Rita Chapin, Chief Operating Officer, 415 Michigan Avenue NE, Washington, DC 20017, (202) 488-3990, Rita.Chapin@appletreeinstitute.org

2. **Occupational Therapy Services:** Please contact Jade Bryant, Special Education and Social Work Manager, for details on the RFP. The deadline for responding to the RFP is December 1, 2013 at 4pm. Contact - Jade Bryant, Special Education and Social Work Manager, 415 Michigan Avenue NE, Washington, DC 20017, (202) 488-3990, Jade.Bryant@appletreeinstitute.org

3. **Physical Therapy Services:** Please contact Jade Bryant, Special Education and Social Work Manager, for details on the RFP. The deadline for responding to the RFP is December 1, 2013 at 4pm. Contact - Jade Bryant, Special Education and Social Work Manager, 415 Michigan Avenue NE, Washington, DC 20017, (202) 488-3990, Jade.Bryant@appletreeinstitute.org

4. **Psychological Services:** Please contact Jade Bryant, Special Education and Social Work Manager, for details on the RFP. The deadline for responding to the RFP is December 1, 2013 at 4pm. Contact - Jade Bryant, Special Education and Social Work Manager, 415 Michigan Avenue NE, Washington, DC 20017, (202) 488-3990, Jade.Bryant@appletreeinstitute.org

5. **Speech and Language Pathology Services**. Please contact Jade Bryant, Special Education and Social Work Manager, for details on the RFP. The deadline for responding to the RFP is December 1, 2013 at 4pm. Contact - Jade Bryant, Special Education and Social Work Manager, 415 Michigan Avenue NE, Washington, DC 20017, (202) 488-3990, Jade.Bryant@appletreeinstitute.org

APPLETREE EARLY LEARNING PCS
REQUEST FOR PROPOSALS

Office Supplies Services

AppleTree Early Learning PCS is seeking an organization to provide office supplies services. Please contact John Moore, Director of Technology and Human Resources, for details on the RFP. The deadline for responding to the RFP is December 20, 2013 at 4pm. Contact – Tony Taylor, Operations and Compliance Manager, 415 Michigan Avenue NE, Washington, DC 20017, (202) 488-3990, Tony.Taylor@appletreeinstitute.org

APPLETREE EARLY LEARNING PCS
REQUEST FOR PROPOSALS

Copier Maintenance Services

AppleTree Early Learning PCS is seeking an organization to provide copier maintenance services. Please contact John Moore, Director of Technology and Human Resources, for details on the RFP. The deadline for responding to the RFP is December 20, 2013 at 4pm. Contact - John Moore, Director of Technology and Human Resources, 415 Michigan Avenue NE, Washington, DC 20017, (202) 488-3990, John.Moore@appletreeinstitute.org

CHILD SUPPORT SERVICES DIVISION
DISTRICT OF COLUMBIA CHILD SUPPORT GUIDELINE COMMISSION

NOTICE OF A PUBLIC MEETING

The District of Columbia's Child Support Guideline Commission's meeting

Wednesday, November 27, 2013, at 8:30 A.M.
D.C. Office of the Attorney General, Child Support Services Division
441 4th Street, NW, Ste. 550N
Conference Room A
Washington, D.C. 20001

The District of Columbia Child Support Guidelines Commission (Commission) announces meeting in which it will discuss proposed changes to the District's Child Support Guideline (Guideline). The Commission's mission is to review the Guideline annually and to provide the Mayor with recommendations for improving the efficiency and effectiveness of the Guideline. In order to achieve its objective, and to ensure the recommendations the Commission provides to the Mayor take into account the public's concerns, it invites the public to attend its meeting.

Persons wishing to review the Child Support Guideline prior to the public meeting, may access it online by visiting the District of Columbia's website at www.dc.gov.

Individuals who wish to attend should contact: Cory Chandler, Chairperson, Child Support Guideline Commission, at 202-724-7835, or by e-mail at cory.chandler@dc.gov by Monday, November 25, 2013. E-mail submissions should include the full name, title, and affiliation, if applicable, of the person(s) wishing to attend. Persons wishing to comment should send nine (9) copies of their written commentary to the Office of the Attorney General for the District of Columbia at the address below.

Individuals who wish to submit their comments as part of the official record should send copies of written statements no later than 4:00 p.m., Tuesday, November 26, 2013 to:

Cory Chandler, Deputy Attorney General
Office of the Attorney General for the District of Columbia
Family Services Division
200 I Street, S.E.
4th Floor
Washington, D.C. 20003

OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

NOTICE OF FUNDS AVAILABILITY

Fiscal Year 2014 DC School Garden Grant (SGG)

Request for Application Announcement Date: **November 22, 2013**

RFA Release Date: **December 6, 2013**

Pre-Application Question Period Deadline: **January 17, 2014**

Application Submission Deadline: **January 31, 2014**

The Division of Wellness and Nutrition Services within the Office of the State Superintendent of Education (OSSE) is soliciting grant applications for the DC School Garden Grant (SGG) as mandated by the Healthy Schools Act (HSA) of 2010 (DC Law 18-209). The purpose of this grant is to increase the capacity and scope of DC school gardens as educational resources.

Eligibility: OSSE will accept applications from DC public schools and public charter schools participating in the HAS in partnership with DC-based school garden or farm to school focused organizations with 501(c) 3 status. OSSE will accept one application for each school campus, however an organization may submit up to four (4) applications with different schools.

Length of Award: The grant award period will be one year. Grant activities must take place between March 3, 2014 and March 2, 2015.

Available Funding for Award: The total funding available for this award period is $300,000. Applicants may apply for an award amount of up to $15,000 to fund new and active school garden/farm to school programs.

To receive more information or for a copy of this RFA, please contact:

Sam Ullery
School Garden Specialist
Wellness and Nutrition Services Division
DC Office of the State Superintendent of Education
sam.ullery@dc.gov

The RFA and all supporting documents will be available at http://osse.dc.gov/service/school-garden-grant.

BOARD OF ELECTIONS

CERTIFICATION OF ANC/SMD VACANCIES

The District of Columbia Board of Elections hereby gives notice that there are vacancies in three (3) Advisory Neighborhood Commission offices, certified pursuant to D.C. Official Code § 1-309.06(d)(2); 2001 Ed; 2006 Repl. Vol.

VACANT: 5A04, 7F07 and 8E03

Petition Circulation Period: **Monday, November 25, 2013 thru Monday, December 16, 2013**
Petition Challenge Period: **Thursday, December 19, 2013 thru Thur., December 26, 2013**

Candidates seeking the Office of Advisory Neighborhood Commissioner, or their representatives, may pick up nominating petitions at the following location:

D.C. Board of Elections
441 - 4th Street, NW, Room 250N
Washington, DC 20001

For more information, the public may call **727-2525**.

DISTRICT DEPARTMENT OF THE ENVIRONMENT

FISCAL YEAR 2014

PUBLIC NOTICE

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, and D.C. Official Code §2-505, the Air Quality Division (AQD) of the District Department of the Environment (DDOE), located at 1200 First Street NE, 5th Floor, Washington, DC, intends to issue an air quality permit (#5585-C2) to Super Concrete Corporation to construct and subsequently operate an additional emissions control unit (a fabric filter baghouse dust collector) to an existing ready mix concrete batch plant at 5001 Fort Totten Drive NE. The contact person for the facility is Josep Maset, VP/GM, at (301) 982-1400. The applicant's mailing address is 6401 Golden Triangle Drive, Suite 400, Greenbelt, MD 20770.

The addition of this unit will not affect the emissions or emission limits from the existing ready mix concrete batch plant. The following proposed emission limits will remain the same as compared to the limits in the existing operating permit.

The proposed emission limits are as follows:

a. Emissions of dust shall be minimized in accordance with the requirements of 20 DCMR 605 and the "Operational Limitations" of the permit.

b. The emission of fugitive dust from the facility is prohibited. [20 DCMR 605.2]

c. The discharge of particulate matter into the atmosphere from any process shall not exceed three hundredths (0.03) grains per dry standard cubic foot of the exhaust. [20 DCMR 603.1]

d. Visible emissions shall not be emitted into the outdoor atmosphere from stationary sources; provided, that the discharges not exceeding forty percent (40%) opacity (unaveraged) shall be permitted for two (2) minutes in any sixty (60) minute period and for an aggregate of twelve (12) minutes in any twenty-four hour (24 hr.) period during start-up, cleaning, soot blowing, adjustment of combustion controls, or malfunction of the equipment. [20 DCMR 606.1]

e. An emission into the atmosphere of odorous or other air pollutants from any source in any quantity and of any characteristic, and duration which is, or is likely to be injurious to the public health or welfare, or which interferes with the reasonable enjoyment of life or property is prohibited. [20 DCMR 903.1]

The permit application and supporting documentation, along with the draft permit are available for public inspection at AQD and copies may be made available between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Stephen S. Ours at (202) 535-1747.

Interested persons may submit written comments or may request a hearing on this subject within 30 days of publication of this notice. The written comments must also include the person's name, telephone number, affiliation, if any, mailing address and a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit.

Comments on the proposed permit and any request for a public hearing should be addressed to:

Stephen S. Ours
Chief, Permitting Branch
Air Quality Division
District Department of the Environment
1200 First Street NE, 5th Floor
Washington, DC 20002
Stephen.Ours@dc.gov

No written comments or hearing requests postmarked after December 23, 2013 will be accepted.

For more information, please contact Stephen S. Ours at (202) 535-1747.

DISTRICT DEPARTMENT OF THE ENVIRONMENT

FISCAL YEAR 2014

PUBLIC NOTICE

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, and D.C. Official Code §2-505, the Air Quality Division (AQD) of the District Department of the Environment (DDOE), located at 1200 First Street NE, 5th Floor, Washington, DC, intends to issue Permit #6347-R1 to the District of Columbia Water and Sewer Authority (DC Water) to renew and update the permit construct the Enhanced Nitrogen Removal (ENR) equipment listed below, located at the Blue Plains Advanced Wastewater Treatment Plant at 5000 Overlook Avenue SW, Washington, DC. The contact person for the facility is Meena Gowda, Principal Counsel at (202) 787-2628.

ENR Equipment to be Permitted

The project consists of the following significant components:

- **Denitrification Carbon Storage and Feed System**:
  - Two (2) new Denitrification Carbon Methanol Vapor Scrubbers (DCMVS 1 and 2);
  - Four (4) new 60,000 gallon Denitrification Carbon Storage Tanks (DCST 1, 2, 3, and 4);
  - Three (3) Denitrification Carbon Storage Tanks Mixing Pumps;
  - Four (4) Denitification Carbon Feed Pumps;
  - Four (4) Denitrification Carbon Transfer Pumps;
  - Eight (8) Denitrification Reactors and two (2) post aeration tanks; and
  - Three (3) Methanol Unloading Pumps.

- **Alternate Carbon Storage and Feed System:**
  - Two (2) new Alternate Carbon Methanol Vapor Scrubbers (ACMVS 1 and 2);
  - One (1) new 30,000 gallon Alternate Carbon Storage Tank (ACST-1);
  - Two (2) Alternate Carbon Unloading Pumps; and
  - Five (5) Alternate Carbon Mixing and Transfer Pumps.

- **Blended Alternate Carbon (BAC) Storage and Feed System:**
  - Three (3) Blended Alternate Carbon Mixing Pumps;
  - Two (2) Blended Alternate Carbon Transfer Pumps;
  - Two (2) new Blended Alternate Carbon Feed Pumps;
  - One (1) 30,000 gallon Alternate Carbon Blend Storage Tank (ACST-2);
  - Three (3) 10,000 gallon Blended Alternate Carbon Storage Tanks (MST 5, 6, and 7) for storage of methanol or a blend (already existing); and
  - One (1) 650 gallon day tank for use with BAC or methanol (already existing).

- **Demolition of the Lime Building and Four (4) Underground Storage Tanks**

The primary control devices consist of the following:

Emissions Control Device			
Scrubber ID	**Number**	**Scrubber Name**	**Description**
DCMVS	1, 2	Packed Tower Scrubber	Two (2) Duall Packed Tower Carbon Methanol Vapor Scrubbers used to control emissions of methanol by a factor of 99.0% from DCST 1, 2, 3, and 4.
ACMVS	1, 2	Packed Tower Scrubber	Two (2) Duall Packed Tower Alternate Carbon Methanol Vapor Scrubbers used to control emissions of methanol by a factor of 99.0% from ACST 1 and 2 as well as MST 5, 6, and 7 and the 650 gallon day tank.

The proposed emission limits are as follows:

a. Visible emissions shall not be emitted into the outdoor atmosphere from each of the emission units and control equiopment,, except that discharges not exceeding forty percent (40%) opacity (unaveraged) shall be permitted for two (2) minutes in any sixty (60) minute period and for an aggregate of twelve (12) minutes in any twenty-four hour (24 hr.) period during start-up, cleaning, adjustment of combustion controls, or malfunction of the equipment [20 DCMR 606.1]

b. An emission into the atmosphere of odorous or other air pollutants from any source in any quantity and of any characteristic, and duration which is, or is likely to be injurious to the public health or welfare, or which interferes with the reasonable enjoyment of life or property is prohibited. [20 DCMR 903.1].

c. The Permittee shall ensure that the vented methanol control system and handling procedures, and the closed vent system of the DCST at the facility are consistent with the optimal operation of the methanol scrubbing system so as to achieve a removal efficiency of at least 99.0 percent of methanol vapors from the storage tanks exhaust streams (including both working and breathing losses) so as to achieve a maximum methanol outlet concentration of 980 ppmv. [20 DCMR 201]

The application documentation to construct the Enhanced Nitrogen Removal system and the draft permit and supporting documents are available for public inspection at AQD and copies may be made available between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Stephen S. Ours at (202) 535-1747.

Interested persons may submit written comments or may request a hearing on this subject within 30 days of publication of this notice. The written comments must also include the person's name, telephone number, affiliation, if any, mailing address and a statement outlining the air

quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit.

Comments on the proposed permit and any request for a public hearing should be addressed to:

Stephen S. Ours
Chief, Permitting Branch
Air Quality Division
District Department of the Environment
1200 First Street NE, 5th Floor
Washington, DC 20002
Stephen.Ours@dc.gov

No written comments or hearing requests postmarked after December 23, 2013 will be accepted.

For more information, please contact Stephen S. Ours at (202) 535-1747.

DISTRICT DEPARTMENT OF THE ENVIRONMENT

FISCAL YEAR 2014

PUBLIC NOTICE

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, and D.C. Official Code §2-505, the Air Quality Division (AQD) of the District Department of the Environment (DDOE), located at 1200 First Street NE, 5th Floor, Washington, DC, intends to issue Permit Nos. 6809 and 6810 to Pepco Energy Services, Inc. to construct and operate two 9.9 million BTU per hour Cleaver Brooks natural gas temporary boilers, located at the Blue Plains Wastewater Treatment Plant (WWTP) in Washington, DC. The contact person for the applicant is Thomas E. McArtor, Director of Construction, Power & Thermal, at (703) 253-1799.

Temporary Boilers to be Permitted

Equipment Location	Address	Equipment Size (MMBTU/hr heat input)	Model Number	Permit No.
Blue Plains WWTP	5000 Overlook Ave. SW Washington DC	9.9	CB200-250S	6809
Blue Plains WWTP	5000 Overlook Ave. SW Washington DC	9.9	CB200-250S	6810

The proposed emission limits are as follows:

a. Each of the two (2) identical 9.9 million BTU per hour Cleaver Brooks natural gas –fired boilers, shall not emit pollutants in excess of those specified in the following table [20 DCMR 201]:

Boiler Emission Limits		
Pollutant	**Short-Term Limit (Natural Gas) (lb/hr)**	**Annual (ton/yr)**
Carbon Monoxide (CO)	0.36	1.56
Oxides of Nitrogen (NO_x)	1.00	4.38
Particulate Matter < 10 microns (PM10)	0.10	0.43
Volatile Organic Compounds (VOC)	0.05	0.22
Sulfur Dioxide (SO_2)	0.02	0.09

b. Particulate matter emissions from each boiler shall not exceed 0.10 pound per million BTU. [20 DCMR 600.1]

c. No visible emissions shall be emitted into the outdoor atmosphere from each boiler; except that no greater than 40% opacity (unaveraged) shall be permitted for two minutes per hour

and for an aggregate of twelve minutes per 24-hour period during start-up, cleaning, soot blowing, adjustment of combustion controls, or malfunction.[20 DCMR 606.1]

d. An emission into the atmosphere of odorous or other air pollutants from any source in any quantity and of any characteristic, and duration which is, or is likely to be injurious to the public health or welfare, or which interferes with the reasonable enjoyment of life or property is prohibited. [20 DCMR 903.1]

e. Violation of standards set forth in Condition II(c), as a result of unavoidable malfunction, despite the conscientious employment of control practices, shall constitute an affirmative defense on which the Permittee shall bear the burden of proof. Periods of malfunction shall cease to be unavoidable malfunctions if reasonable steps are not taken to eliminate the malfunction within a reasonable time. [20 DCMR 606.5]

f. Where the presence of uncombined water is the only reason for failure of an emission to meet the requirements of Condition II(c), the latter shall not be applicable. [20 DCMR 606.7]

<u>The estimated maximum emissions from each temporary boiler are as follows:</u>

Pollutant	**Emission Rate (lb/hr)**	**Maximum Annual Emissions (tons/yr)**
Carbon Monoxide (CO)	0.36	1.56
Oxides of Nitrogen (NO_x)	1.00	4.38
Total Particulate Matter , PM (Total)	0.10	0.43
Volatile Organic Compounds (VOCs)	0.05	0.22
Sulfur Dioxide (SO_x)	0.02	0.09

The applications to construct and operate the temporary boilers, the draft permits, and supporting documents are available for public inspection at AQD and copies may be made available between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Stephen S. Ours at (202) 535-1747.

Interested persons may submit written comments or may request a hearing on this subject within 30 days of publication of this notice. The written comments must also include the person's name, telephone number, affiliation, if any, mailing address and a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit.

Comments on the proposed permit and any request for a public hearing should be addressed to:

Stephen S. Ours
Chief, Permitting Branch
Air Quality Division
District Department of the Environment
1200 First Street NE, 5th Floor

Washington, DC 20002
Stephen.Ours@dc.gov

No written comments or hearing requests postmarked after December 23, 2013 will be accepted.

For more information, please contact Stephen S. Ours at (202) 535-1747.

DISTRICT DEPARTMENT OF THE ENVIRONMENT

FISCAL YEAR 2014

PUBLIC NOTICE

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, and D.C. Official Code §2-505, the Air Quality Division (AQD) of the District Department of the Environment (DDOE), located at 1200 First Street NE, 5th Floor, Washington, DC, intends to issue air quality permit #6813 to Virginia Electric and Power Co. d/b/a Dominion Virginia Power to operate one (1) 400 kW diesel-fired emergency generator set at Fort Lesley J. McNair, 4th and P Streets SW, Building 36, Washington, DC. The contact person for the applicant is Mr. Andy Gates at (804) 273-2950.

Emissions:

Maximum annual potential emissions from the unit are expected to be as follows:

Pollutant	Maximum Annual Emissions (tons/yr)
Particulate Matter (PM) (Total)	0.01
Sulfur Oxides (SOx)	0.001
Nitrogen Oxides (NOx)	0.60
Volatile Organic Compounds (VOC)	0.01
Carbon Monoxide (CO)	0.06

The proposed overall emission limits for the equipment are as follows:

a. Emissions from the unit shall not exceed those in the following table, as measured according to the procedures set forth in 40 CFR 89, Subpart E. [40 CFR 60.4205(b), 40 CFR 60.4202(a)(2) and 40 CFR 89.112(a)]:

Pollutant Emission Limits (g/kW-hr)		
NMHC+NOx	CO	PM
4.0	3.5	0.20

b. Visible emissions shall not be emitted into the outdoor atmosphere from this generator, except that discharges not exceeding forty percent (40%) opacity (unaveraged) shall be permitted for two (2) minutes in any sixty (60) minute period and for an aggregate of twelve (12) minutes in any twenty-four hour (24 hr.) period during start-up, cleaning, adjustment of combustion controls, or malfunction of the equipment [20 DCMR 606.1].

c. An emission into the atmosphere of odorous or other air pollutants from any source in any quantity and of any characteristic, and duration which is, or is likely to be injurious to the public health or welfare, or which interferes with the reasonable enjoyment of life or property is prohibited. [20 DCMR 903.1]

The permit application and supporting documentation, along with the draft permit are all available for public inspection at AQD and copies may be made available between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Stephen S. Ours at (202) 535-1747.

Interested persons may submit written comments or may request a public hearing on this subject within 30 days of publication of this notice. The written comments must also include the person's name, telephone number, affiliation, if any, mailing address and a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit.

Comments on the proposed permit and any request for a public hearing should be addressed to:

Stephen S. Ours
Chief, Permitting Branch
Air Quality Division
District Department of the Environment
1200 First Street NE, 5th Floor
Washington, DC 20002
Stephen.Ours@dc.gov

No written comments postmarked after December 23, 2013 will be accepted.

For more information, please contact Stephen S. Ours at (202) 535-1747.

DISTRICT DEPARTMENT OF THE ENVIRONMENT

FISCAL YEAR 2014

PUBLIC NOTICE

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, and D.C. Official Code §2-505, the Air Quality Division (AQD) of the District Department of the Environment (DDOE), located at 1200 First Street NE, 5th Floor, Washington, DC, intends to issue air quality permit #6814 to Virginia Electric and Power Co. d/b/a Dominion Virginia Power to operate one (1) 800 kW diesel-fired emergency generator set at Fort Lesley J. McNair, 4th and P Streets SW, Building 52, Washington, DC. The contact person for the applicant is Mr. Andy Gates at (804) 273-2950.

Emissions:

Maximum annual potential emissions from the unit are expected to be as follows:

Pollutant	Maximum Annual Emissions (tons/yr)
Particulate Matter (PM) (Total)	0.01
Sulfur Oxides (SOx)	0.002
Nitrogen Oxides (NOx)	1.73
Volatile Organic Compounds (VOC)	0.01
Carbon Monoxide (CO)	0.08

The proposed overall emission limits for the equipment are as follows:

a. Emissions from the unit shall not exceed those in the following table, as measured according to the procedures set forth in 40 CFR 89, Subpart E. [40 CFR 60.4205(b), 40 CFR 60.4202(a)(2) and 40 CFR 89.112(a)]:

Pollutant Emission Limits (g/kW-hr)		
NMHC+NOx	CO	PM
6.4	3.5	0.20

b. Visible emissions shall not be emitted into the outdoor atmosphere from this generator, except that discharges not exceeding forty percent (40%) opacity (unaveraged) shall be permitted for two (2) minutes in any sixty (60) minute period and for an aggregate of twelve (12) minutes in any twenty-four hour (24 hr.) period during start-up, cleaning, adjustment of combustion controls, or malfunction of the equipment [20 DCMR 606.1].

c. An emission into the atmosphere of odorous or other air pollutants from any source in any quantity and of any characteristic, and duration which is, or is likely to be injurious to the public health or welfare, or which interferes with the reasonable enjoyment of life or property is prohibited. [20 DCMR 903.1]

The permit application and supporting documentation, along with the draft permit are all available for public inspection at AQD and copies may be made available between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Stephen S. Ours at (202) 535-1747.

Interested persons may submit written comments or may request a public hearing on this subject within 30 days of publication of this notice. The written comments must also include the person's name, telephone number, affiliation, if any, mailing address and a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit.

Comments on the proposed permit and any request for a public hearing should be addressed to:

Stephen S. Ours
Chief, Permitting Branch
Air Quality Division
District Department of the Environment
1200 First Street NE, 5th Floor
Washington, DC 20002
Stephen.Ours@dc.gov

No written comments postmarked after December 23, 2013 will be accepted.

For more information, please contact Stephen S. Ours at (202) 535-1747.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY

Office of Government Ethics

BEGA – Advisory Opinion – Unredacted - 1127-001

VIA EMAIL

November 5, 2013

Patricia Howard-Chittams
2936 M Street, S.E.
Washington, D.C. 20019
phchittams@gmail.com

Dear Ms. Chittams:

This responds to your October 29, 2013 email, by which you request advice concerning whether a possible teaching position for pay at the University of the District of Columbia School of Nursing ("UDC") would be consistent with your ethical obligations as an Advisory Neighborhood Commissioner ("ANC"). Based upon the information you provided in your email and in your follow-up conversations with a member of my staff, I conclude that, as long as you ensure that you meet the requirements set forth below, the outside teaching activity would be permissible.

You are the ANC for Advisory Neighborhood Commission 7B01. As an ANC, your powers and duties are established, generally, by section 738(c) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 825; D.C. Official Code § 1-207.38(c)); *see also* http://anc.dc.gov/page/about-anc (providing background on ANC functions).

You state that you have been interviewed for the position of adjunct professor at UDC. You also state that, if hired, you would be teaching nursing; that you would be compensated; that your teaching would occur outside the time given to your ANC duties and would not involve the use of any District government resources; and that the content of course material will not use official data or ideas obtained from your ANC responsibilities which have not become part of the body of public information.

As an ANC, you are considered to be a "public official" for purposes of section 1802 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 ("CMPA"), effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-618.02).[1]

[1] *See* section 301(14A)(E) of the CMPA (D.C. Official Code § 1-603.01(14A)(E) (defining "public official" to include ANCs).

The section provides that "[n]o employee, member of a board or commission, or a public official of the District government shall engage in outside employment or private business activity or have any direct or indirect financial interest that conflicts or would appear to conflict with the fair, impartial, and objective performance of officially assigned duties and responsibilities."

I do not see that there would be a conflict between your accepting the adjunct professor position, if offered, and your ANC responsibilities. Further, I find that certain provisions in the District Personnel Manual ("DPM"), which, while they do not apply to you as an ANC, do reflect best practices for ANCs, would also be satisfied in your case.[2]

The first provision is DPM § 1804.3, which states:

> An employee may engage in teaching activities, writing for publication, consultative activities, and speaking engagements that are not prohibited by law, regulation, or agency standards, only if such activities are conducted outside of regular working hours, or while the employee is on annual leave or leave without pay.

The second provision, DPM § 1804.4, states:

> The information used by an employee engaging in an activity under § 1804.3 shall not draw on official data or ideas which have not become part of the body of public information, except nonpublic information that has been made available on request for use in such capacity, or unless the agency head gives written authorization for use on the basis that its use is in the public interest.

The last provision, DPM § 1804.5, states:

> If the employee receives anything of monetary value for engaging in an activity under §1804.3, the subject matter shall not be devoted substantially to the responsibilities, programs, or operations of his or her agency, to his or her official duties or responsibilities or to information obtained from his or her government employment.

Please be advised that this advice is provided to you pursuant to section 219 of the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011 ("Ethics Act"), effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code § 1-1162.19), which empowers me to provide such guidance. As a result, no enforcement action for violation of the District's Code of Conduct may be

[2] Please note that my analysis would have been different – although not my conclusion – if you were a paid District government employee, rather than an uncompensated ANC. Paid District government employees are permitted to teach at UDC, a District agency, even though the teaching would be a second government job. That is one of the exceptions to the rule that an employee cannot receive basic pay from more than one position in the District government for more than an aggregate of forty hours of work in one calendar week. *See* DPM § 1147.4(i).

taken against you in this context, provided that you have made full and accurate disclosure of all relevant circumstances and information in seeking this advisory opinion. You are also advised that the Ethics Act requires this opinion to be published in the District of Columbia Register within 30 days of its issuance, but that your identity will not be disclosed unless you consent to such disclosure in writing. Please, then, let me know your wishes about disclosure.

If you have any questions or wish to discuss this matter further, I can be reached at 202-481-3411, or by email at darrin.sobin@dc.gov.

Sincerely,

___________/s/_________________________
DARRIN P. SOBIN
Director of Government Ethics
Board of Ethics and Government Accountability

DPS/jjg

#1127-001

DEPARTMENT OF HEALTH
HEALTH PROFESSIONAL LICENSING ADMINISTRATION

NOTICE OF MEETING

Board of Medicine
November 27, 2013

On NOVEMBER 27, 2013 at 8:30 am, the Board of Medicine will hold a meeting to consider and discuss a range of matters impacting competency and safety in the practice of medicine.

In accordance with Section 405(b) of the Open Meetings Amendment Act of 2010, the meeting will be closed from 8:30 am until 10:30 am to plan, discuss, or hear reports concerning licensing issues, ongoing or planned investigations of practice complaints, and or violations of law or regulations.

The meeting will be open to the public from 10:30 am to 11:30 am to discuss various agenda items and any comments and/or concerns from the public. After which the Board will reconvene in closed session to continue its deliberations until 12:30 pm.

The meeting location is 899 North Capitol Street NE, 2nd Floor, Washington, DC 20002.

Meeting times and/or locations are subject to change – please visit the Board of Medicine website www.doh.dc.gov/bomed and select BoMed Calendars and Agendas to view the agenda and any changes that may have occurred.

Executive Director for the Board – Jacqueline A. Watson, DO, MBA, (202) 724-8755.

DISTRICT OF COLUMBIA COMMISSION ON JUDICIAL DISABILITIES AND TENURE

Judicial Tenure Commission Begins Reviews Of Judges John A. Terry, Geoffrey M. Alprin, Gregory E. Mize, And Patricia A. Wynn

This is to notify members of the bar and the general public that the Commission is reviewing the qualifications of Judge John A. Terry of the District of Columbia Court of Appeals, and reviewing the qualifications of Judges Geoffrey M. Alprin, Gregory E. Mize, and Patricia A. Wynn of the Superior Court of the District of Columbia, who have each requested a recommendation for reappointment as a Senior Judge.

The District of Columbia Retired Judge Service Act P.L. 98-598, 98 Stat. 3142, as amended by the District of Columbia Judicial Efficiency and Improvement Act, P.L. 99-573, 100 Stat. 3233, §13(1) provides in part as follows:

> "…A retired judge willing to perform judicial duties may request a recommendation as a senior judge from the Commission. Such judge shall submit to the Commission such information as the Commission considers necessary to a recommendation under this subsection.
>
> (2) The Commission shall submit a written report of its recommendation and findings to the appropriate chief judge of the judge requesting appointment within 180 days of the date of the request for recommendation. The Commission, under such criteria as it considers appropriate, shall make a favorable or unfavorable recommendation to the appropriate chief judge regarding an appointment as senior judge. The recommendation of the Commission shall be final.
>
> (3) The appropriate chief judge shall notify the Commission and the judge requesting appointment of such chief judge's decision regarding appointment within 30 days after receipt of the Commission's recommendation and findings. The decision of such chief judge regarding such appointment shall be final."

The Commission hereby requests members of the bar, litigants, former jurors, interested organizations and members of the public to submit any information bearing on the qualifications of Judges Terry, Alprin, Mize, and Wynn which it is believed will aid the Commission. The cooperation of the community at an early stage will greatly aid the Commission in fulfilling its responsibilities. The identity of any person submitting materials will be kept confidential unless expressly authorized by the person submitting the information.

All communications should be mailed, or faxed, by **January 3, 2014**, and addressed to:

District of Columbia Commission on Judicial Disabilities and Tenure
Building A, Room 246
515 Fifth Street, N.W.
Washington, D.C. 20001
Telephone: (202) 727-1363
FAX: (202) 727-9718

The members of the Commission are:

Hon. Gladys Kessler, Chairperson
Jeannine C. Sanford, Esq., Vice Chairperson
Michael K. Fauntroy, Ph.D.
Shirley Ann Higuchi, Esq.
William P. Lightfoot, Esq.
Anthony T. Pierce, Esq.

BY: /s/ Gladys Kessler
Chairperson

KIPP DC PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Synthetic Turf Installation

KIPP is now requesting proposals from qualified vendors for the supply and installation of synthetic turf surface to support KIPP DC's physical education and other ancillary programs for a Pre-K through 8th grade student population. Proposals are due no later than 5:00 pm on Friday, December 6, 2013. The RFP can be obtained by contacting via email:

Lindsay Snow, Real Estate Manager
KIPP DC
1003 K Street NW, Suite 700
Washington, DC 20001
Lindsay.Snow@kippdc.org
(202) 315-6927

OPTIONS PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS:

Audit of Individualized Education Programs

Options Public Charter School (Options PCS) seeks proposals to audit approximately 250 Individualized Education Programs (IEPs). Proposals are due on Monday, December 2, 2013, at 5:00 p.m. EST. To obtain the full Request for Proposals, visit http://www.optionsschool.org; pick up a copy in the Main Office at Options PCS, 1375 E Street, NE, Washington, DC 20002; or contact Dr. Charles Vincent, Executive Director of Options PCS, at cvincent@optionsschool.org or (202) 547-1028 ext. 205.

OFFICE OF THE DEPUTY MAYOR FOR PLANNING AND ECONOMIC DEVELOPMENT

ST. ELIZABETHS EAST SUMMER PROGRAMMING

NOTICE OF FUNDING AVAILABILITY

St. Elizabeths East Summer Funding Grant

The District's Office of the Deputy Mayor for Planning and Economic Development (ODMPED) invites the submission of applications for a one-time grant to a non-profit as a part of the St. Elizabeths East Summer Programming (SEE-SP). Funding for this program is authorized under the "Economic Development Special Account Revival Amendment Act of 2012", effective September 20, 2012 (D.C. Law 19-168; D.C. Official Code §2-1225.21).

The purpose of the SEE-SP Grant is to provide a non-profit organization (or partnering non-profit organizations) with a single, one-time grant of a maximum of $100,000 to activate two summer events at the St. Elizabeths East campus geared towards local residents and visitors. The goal of the SEE-SP is to specifically engage the local Ward 8 community in activities on the St. Elizabeths East campus, provide an opportunity for residents and visitors to learn about St. Elizabeths East, the development of the innovation hub and its basic concepts, engage the community in events that encompass civic, humanities, and technology-focused educational components.

Eligible applicants include 501(c) 3 organizations that can demonstrate a successful history of engaging the DC community and have a successful track record of offering and operating programs for the DC community. Eligible projects must fall into one of the following two categories: (1) arts, humanities and culture; and (2) technology-focused educational programs. The successful applicant will be provided space on the St. Elizabeths East campus between July 1, 2014 and July 31, 2014 to organize events on July 13-14, 2014 and July 19-20, 2014. Proposed applicants that are based in, or working in partnership non-profits based in Ward 8, or have a demonstrated experience in working and/or hosting in Ward 8, and that propose projects that leverage existing resources shall be given special consideration. Applicants should be prepared to seek corporate sponsorship to enhance the profile of the event. Additional applicant and project eligibility requirements and evaluation criteria are detailed in the Request for Applications (RFA).

The Request for Applications will be released on Friday, December 6, 2013, and the deadline for submission is Wednesday, January 8, 2014 at 4 p.m.

The RFA will be posted on the District's Grants Clearinghouse website at: http://opgs.dc.gov/page/opgs-district-grants-clearinghouse and ODMPED website www.dmped.dc.gov under Grant Opportunities.

For additional information, contact LaToyia Hampton, Grants Manager for the Office of the Deputy Mayor for Planning & Economic Development, at latoyia.hampton@dc.gov.

GOVERNMENT OF THE DISTICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT
441 4TH STREET, N.W.
SUITE 200-SOUTH
WASHINGTON, D.C. 20001

PUBLIC NOTICE OF CLOSED MEETING

In accordance with § 405(c) of the Open Meetings Act, D.C. Official Code § 2-575 (c), on 11/19/13, the Board of Zoning Adjustment voted 3-0-2, to hold closed meetings telephonically on Monday, December 2, 9 and 16, 2013, beginning at 4:00 pm for the purpose of obtaining legal advice from counsel and/or to deliberate upon, but not voting on the cases scheduled to be publicly heard or decided by the Board on the day after each such closed meeting, as those cases are identified on the Board's agendas for December 3, 10 and 17, 2013; and,

In accordance with § 407 of the District of Columbia Administrative Procedure Act, I also move in the same motion that the Board of Zoning Adjustment hold a closed meeting on Tuesday, December 10, 2013, from 1:00 p.m. to 4:00 p.m. for the purpose of conducting internal training, pursuant to § 405(b)(12) of the Open Meetings Amendment Act of 2010.

FOR FURTHER INFORMATION, CONTACT THE OFFICE OF ZONING AT (202) 727-6311.

LLOYD J. JORDAN, CHAIRMAN, S. KATHRYN ALLEN, JEFFREY L. HINKLE AND A MEMBER OF THE ZONING COMMISSION ---------------- BOARD OF ZONING ADJUSTMENT, CLIFFORD W. MOY, SECRETARY TO THE BZA, SARA A. BARDIN, DIRECTOR, OFFICE OF ZONING.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF CLOSED MEETINGS

TIME AND PLACE: **Tuesday, December 10, 2013, @ 1:00 p.m.**
Office of Zoning Conference Room
441 4th Street, N.W., Suite 220
Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

The Zoning Commission, in accordance with § 406 of the District of Columbia Administrative Procedure Act ("Act")(D.C. Official Code § 2-576), hereby provides notice it will hold a closed meeting at the time and place noted above for the purpose of receiving training as permitted by D.C. Official Code § 2-575(b)(12).

ANTHONY J. HOOD, MARCIE I. COHEN, ROBERT E. MILLER, PETER G. MAY, AND MICHAEL G. TURNBULL -------- ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA, BY SARA A. BARDIN, DIRECTOR, AND BY SHARON S. SCHELLIN, SECRETARY TO THE ZONING COMMISSION.

Notice: This decision may be formally revised before it is published in the District of Columbia Register. Parties should promptly notify this office of any errors so that they may be corrected before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

Government of the District of Columbia
Public Employee Relations Board

In the Matter of: Government of the District of Columbia, District of Columbia Public Schools, and Child and Family Services Administration, Complainants, v. American Federation of State, County, and Municipal Employees, District Council 20, Local Union 2921, AFL-CIO, and Washington Teachers Union, Local #6, American Federation of Teachers, AFL-CIO, Respondents.	PERB Case No. 12-N-03 Opinion No. 1429 Motion for Reconsideration

DECISION AND ORDER

I. Statement of the Case

Complainants Government of the District of Columbia ("District"), District of Columbia Public Schools ("DCPS"), and District of Columbia Child and Family Services Administration ("CFSA") (collectively, "Complainants") filed with the Public Employee Relations Board ("PERB") an Amended Motion for Injunctive Relief[1] ("Motion for Injunction") pursuant to PERB Rule 553.1, in which Complainants named American Federation of State, County, and Municipal Employees, District Council 20, Local 2921, AFL-CIO ("AFSCME") and Washington Teachers Union, Local 6 ("WTU") (collectively, "Respondents") as the Respondents. (Motion for Injunction, at 1-3). In the Motion, Complainants moved PERB to "issue a permanent injunction effectively staying the arbitration proceedings in Federal

[1] Complainants' original Motion for Injunctive Relief listed DCPS as the only Complainant and AFSCME as the only Respondent.

Mediation and Conciliation Services ("FMCS") Case Nos. 101106-51126-A and 101106-51122-A, both involving a Reduction-in-Force ("RIF") by DCPS; American Arbitration Association ("AAA") Case No. 16 390 00555 10, involving a RIF by CFSA; and [AAA] Case No. 16 390 00817 10, to the extent the grievance challenges the final ratings of DCPS teachers under the IMPACT performance-evaluation instrument." (Motion for Injunction, at 1-2).

Respondents subsequently filed an Opposition to the Motion for Injunction and a Motion to Dismiss. (Opposition to Motion for Injunction, at 1-7). PERB's Executive Director administratively dismissed the Motion for Injunction on grounds that Complainants failed to "[establish] grounds or authority for the Board to grant a motion to stay the arbitration proceedings cited." (Admin. Dismissal, at 3).

Complainants subsequently filed a Motion for Reconsideration, Clarification and/or Amendment of the Executive Director's Dismissal ("Motion for Reconsideration"), to which Respondents filed an Opposition ("Opposition to Motion for Reconsideration"). (Motion for Reconsideration, at 1-3); and (Opposition to Motion for Reconsideration, at 1-6).

No other pleadings having been filed in this matter, Complainants' Motion for Reconsideration is now before the Board for disposition.

II. Background

A. AFSCME & DCPS RIF Cases

On October 2, 2009, DCPS issued a notice that it would RIF approximately 41 employees in AFSCME's bargaining unit on November 2, 2009. (Motion for Injunction, at 3). On October 16, 2009, AFSCME filed a grievance challenging the RIF, which DCPS denied. *Id.*, at 3-4. AFSCME demanded arbitration and the matter was referred to FMCS, which issued a panel on November 6, 2009, as FMCS Case No. 101106-51126-A. *Id.*, at 4. When FMCS sent a letter asking DCPS to rank the arbitrators on the panel, DCPS labor counsel, Michael Levy ("Mr. Levy"), provided conditional rankings of arbitrators but further asserted that DCPS objected to ranking the arbitrators because "protests regarding RIF implementations are, by statute, substantively non-arbitrable." *Id.*, at 2, 4 (citing the Revised Uniform Arbitration Act, D.C. Code § 16-4407(b) and (c)[2] ("RUAA")). Mr. Levy further requested that FMCS cease its

[2] D.C. Code § 16-4407 (b) and (c): "(b) On motion of a person alleging that an arbitration proceeding has been initiated or threatened but that there is no agreement to arbitrate, the court shall proceed summarily to decide the issue. If the court finds that there is an enforceable agreement to arbitrate, it shall order the parties to arbitrate. (c) If the court finds that there is no enforceable agreement, it may not, pursuant to subsection (a) or (b) of this section, order the parties to arbitrate."

involvement in the case because, "pursuant to its own regulations, it cannot resolve arbitrability issues." *Id.*, at 4 (citing 29 CFR § 1404.4). This same scenario played out with regard to another DCPS RIF and AFSCME grievance from August and September 2009, resulting in FMCS Case No. 101106-51122-A. *Id.* FMCS appointed arbitrators for the two (2) cases, but both matters were stayed indefinitely when DCPS' filed motions in D.C. Superior Court ("Court") seeking to have the cases declared non-arbitrable under the RUAA. *Id.*, at 4-5.

B. AFSCME & CFSA RIF Case

On April 26, 2010, CFSA notified AFSCME that it intended to realign the agency which would result in a RIF of all Social Services Assistant ("SSA") positions and create the new position of Family Support Worker ("FSW"). *Id.*, at 5-6. On May 21, 2010, AFSCME filed a grievance challenging the RIF, which CFSA later denied on the grounds that the RIF was governed by D.C. Code § 1-624.08 *et seq.* (governing the abolishment of positions in the District for the fiscal year 2000 and subsequent fiscal years), which it said granted CFSA "unfettered discretion to identify positions for abolishment notwithstanding the provisions of [D.C. Code §§] 1-617.08 [(governing management rights)] or 1-624.02(d) [(requiring that RIFs not take place until the employee has been afforded at least 15 days written advance notice of the action and applicable retention standing and appeal rights)]." *Id.*, at 6-7. CFSA further asserted that "any attempt to subject a RIF to the grievance and arbitration procedure of a [collective bargaining agreement] is invalid" because D.C. Code § 1-624.08(f)(2) limits appeals of RIFs to the D.C. Office of Employee Appeals ("OEA"). *Id.*, at 7. AFSCME demanded arbitration and the matter was referred to AAA, which issued a panel on July 20, 2010, under AAA Case No. 16 390 00555 10. *Id.* Despite CFSA's assertion that "AAA does not have jurisdiction to resolve substantive arbitrability issues", AAA appointed an arbitrator to the case. *Id.*

C. WTU & DCPS IMPACT Case

In or about fall 2009, DCPS implemented a new teacher evaluation procedure known as IMPACT. *Id.*, at 8. Following the 2009-2010 school year, approximately 94 WTU bargaining unit members were rated "Ineffective" and approximately 670 members were rated "Minimally Effective" in their IMPACT evaluations. *Id.* DCPS terminated all but six (6) of those who received "Ineffective" ratings. *Id.* Those who received "Minimally Effective" ratings were informed that they would be terminated after the next school year if they received a second "Minimally Effective" or lower rating. *Id.* WTU demanded arbitration and the matter was referred to AAA, which issued a panel on November 19, 2010, under AAA Case No. 16 390 00817 10. *Id.* D.C.'s Office of Labor Relations and Collective Bargaining ("OLRCB"), on behalf of DCPS, conditionally participated in the arbitrator selection process, but simultaneously

objected to the arbitrability of the matter on grounds that D.C. Code § 1-617.18 "makes it clear that the evaluation process for DCPS employees shall be a non-negotiable item for collective bargaining," and Section 15.3 of the collective bargaining agreement between DCPS and WTU "says that 'DCPS's compliance with the evaluation process, and not the evaluation judgment, shall be subject to the grievance and arbitration procedure.'" *Id.*, at 8-9.

D. D.C. Superior Court Motions to Stay Arbitrations

On July 2, 2010, Complainants filed a Motion to Stay Arbitration Proceedings with the D.C. Superior Court in each of the three (3) RIF cases asking the Court to declare the Respondents' challenges to the RIFs non-arbitrable under the RUAA. *Id.*, at 9-10. All three (3) motions were assigned to Judge Joan Zeldon ("Judge Zeldon"), who on March 7, 2012, issued a single opinion dismissing the three (3) motions on grounds that the Court lacked jurisdiction to stay the arbitrations because the CMPA preempted the RUAA and because Complainants had not yet exhausted their administrative remedies ("Zeldon Decision"). *Id.*, and Exhibit 9. On April 5, 2012, DCPS appealed the Zeldon Decision to the D.C. Court of Appeals, after which the Court of Appeals consolidated the three (3) cases[3]. *Id.*, at 10; and (Opposition to Motion for Injunction, at 2).

On February 11, 2011, DCPS filed a motion with the D.C. Superior Court to stay the arbitration proceedings in the IMPACT grievance, also invoking the RUAA. *Id.*, at 10. DCPS' motion was assigned to Judge Anita Josey-Herring ("Judge Josey-Herring"), who on August 3, 2011, entered an order permanently staying the arbitration proceedings "to the extent that the IMPACT Grievance seeks to challenge the final evaluations or ratings of DCPS employees",[4] but denied DCPS' motion to stay the arbitration "to the extent that the IMPACT Grievance seeks to challenge whether DCPS properly adhered to the evaluative process outlined in the IMPACT Instrument" ("Josey-Herring Decision"). *Id.*, at 10, and Exhibit 11. WTU appealed the Josey-Herring Decision to the D.C. Court of Appeals, arguing that "the Superior Court did not have jurisdiction to enter the stay because PERB's jurisdiction over the matter preempted the RUAA", and alternatively, that "DCPS failed to exhaust its administrative remedies by seeking relief from PERB." *Id.*, at 10.

[3] Case Nos. 12-CV-476, 12-CV-477, and 12-CV-500.
[4] Judge Josey-Herring further found that "any challenge to the final ratings and evaluations under the IMPACT instrument must follow the administrative appeals process outlined in 5 DCMR §§ 1306.8-1306.13." (Motion for Injunction, Exhibit 11).

E. Motion for Injunctive Relief, Respondents' Opposition, and Administrative Dismissal

On May 22, 2012, Complainants filed with PERB its Motion for Injunction, which it amended on May 30, 2012.[5] In the Motion, Complainants state that they "[do] not believe PERB has authority to grant the relief sought" because they "[do] not believe that, under the best view of the law, PERB has jurisdiction to interpret a law or a collective bargaining agreement to determine the arbitrability of particular matters." *Id.*, at 2, 11. Complainants contend that the RUAA places said authority instead with the D.C. Superior Court. *Id.*, at 2. As a result, Complainants assert that they believe "Judge Zeldon wrongly dismissed [their] motions to stay under the RUAA, and that Judge Josey-Herring rightly exercised jurisdiction over a similar motion." *Id.*, at 11. Notwithstanding, Complainants filed their Motion for Injunction with PERB to "preserve [their] ability to seek relief should the D.C. Court of Appeals eventually rule that PERB, rather than the Superior Court, is the proper body to entertain motions to stay arbitration like those at issue." *Id.*, at 2.

In addition, Complainants admit that none of PERB's statutory authorities fit "comfortably" with their requests that PERB determine whether it has authority to issue permanent stays of arbitration and, if it does, to issue said injunctions. *Id.*, at 11.

Complainants suggest that under D.C. Code § 1-605.02(3)[6], PERB could consider whether Respondents committed an unfair labor practice and order a stay of the arbitrations if PERB determines that Respondents' "pursuit of arbitration over matters that are plainly not arbitrable under their respective CBAs or applicable laws" constitutes a "refusal to bargain in good faith" in violation of D.C. Code § 1-617.04(b)(1) and (3)[7]. *Id.*, at 12-13 (citing *District of Columbia Metropolitan Police Department v. Fraternal Order of Police/Metropolitan Police Department Labor Committee*, 59 D.C. Reg. 6956, Slip Op. No. 1224, PERB Case No. 09-U-48 (2011)).

Alternatively, Complainants suggest that under D.C. Code § 1-615.02(5)[8], PERB could consider whether it can assert jurisdiction over the arbitrations in accordance with its power to determine whether a matter is negotiable within the scope of collective bargaining. *Id.*, at 14-15.

[5] See Footnote 1.
[6] D.C. Code § 1-605.02(3): "The Board shall have power to do the following: ... (3) Decide whether unfair labor practices have been committed and issue an appropriate remedial order".
[7] D.C. Code § 1-617.04(b)(1) & (3): "(b) Employees, labor organizations, their agents, or representatives are prohibited from: (1) Interfering with, restraining, or coercing any employees or the District in the exercise of rights guaranteed by this subchapter; ... (3) Refusing to bargain collectively in good faith with the District if it has been designated in accordance with this chapter as the exclusive representative of employees in an appropriate unit".
[8] D.C. Code § 1-605.02(5): "The Board shall have power to do the following: ... (5) Make a determination in disputed cases as to whether a matter is within the scope of collective bargaining".

Complainants argue that under this theory, PERB could find that in accordance with "D.C. Code § 1-624.04 (2006 Repl.) (which applies to the DCPS RIF-related grievances), and D.C. Code § 1-624.08 (2006 Repl.) (which applies to the CFSA RIF-related grievance), as well as PERB precedent—RIFs and RIF procedures are not within the scope of collective bargaining" and that, as a result, "any grievances attacking the administration of a RIF are non-arbitrable." *Id.* Furthermore, Complainants argue that because D.C. Code § 1-617.18 states that "[n]otwithstanding any other provision of law, rule, or regulation, the evaluation process and instruments for evaluating [DCPS] employees shall be a nonnegotiable item for collective bargaining purposes," PERB could find that WTU's IMPACT-related grievance is similarly non-arbitrable. *Id.* Complainants admit, however, that this theory "is not a perfect fit, because it is not clear how this matter becomes a 'disputed case' before PERB." *Id.*, at 14. Furthermore, Complainants admit that "while [they base their] RIF-related motions on statutes and regulations that remove RIF-related grievances from the scope of collective bargaining, much of [their] authority for arguing the non-arbitrability of WTU's IMAPCT-related claims arises out of the plain language of [collective bargaining agreement between WTU and DCPS]." *Id.*

Lastly, Complainants suggest that under D.C. Code § 1-615.02(6)[9], PERB could consider whether its power to hear appeals from and to enforce arbitration awards empowers it to exercise jurisdiction over the arbitrations. *Id.*, at 15. Complainants note that D.C. Code § 1-615.02(6) is the provision the D.C. Court of Appeals cited in its holdings that the CMPA preempts the RUAA. *Id.* (citing *District of Columbia Metropolitan Police Department v. Fraternal Order of Police/Metropolitan Police Department Labor Committee*, 997 A.2d 65 (D.C. 2010); and *District of Columbia v. American Federation of Government Employees, Local 1403*, 10 A.3d 764 (D.C. 2011)).

Because of Complainants' belief that PERB does not have authority to issue the relief they request in their Motion for Injunction under any of the three (3) possible theories they present, and because Complainants failed to label its Motion under any of their three (3) theories, PERB designated the case as a negotiability appeal solely for the purpose assigning it a case number. (Motion for Injunction, at 1).

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[9] D.C. Code § 1-605.02(6): "The Board shall have power to do the following: ... (6) Consider appeals from arbitration awards pursuant to a grievance procedure; provided, however, that such awards may be modified or set aside or remanded, in whole or in part, only if the arbitrator was without, or exceeded, his or her jurisdiction; the award on its face is contrary to law and public policy; or was procured by fraud, collusion, or other similar and unlawful means; provided, further, that the provisions of this paragraph shall be the exclusive method for reviewing the decision of an arbitrator concerning a matter properly subject to the jurisdiction of the Board, notwithstanding any provisions of Chapter 44 of Title 16 of the District of Columbia Official Code".

In their Opposition to Motion for Injunction, Respondents urge PERB to dismiss Complainants' Motion for Injunction on grounds that: 1) "PERB's Rules do not allow for a stand-alone action for 'injunctive relief"; 2) Complainants' Motion "is procedurally deficient as it does not comply with many of the initial filing requirements of [PERB] Rules 520, 532, or 538"; 3) the Motion cannot be analyzed as an arbitration review request under D.C. Code § 1-605.02(b) "when there is, in fact, no arbitration award to review"; 4) the Zeldon Decision held that while "it very well may be" that the issues in the arbitrations are non-arbitrable under D.C. Code § 1-624.08(a) and (j) and PERB precedent, the question of their arbitrability should have been first "directed to the arbitrators" to make the determination and then appealed to PERB and ultimately to the D.C. Superior Court if Complainants were dissatisfied with the results[10]; and 5) Complainants' Motion is "unripe and without merit". (Opposition to Motion for Injunction, at 1-7) (internal citations omitted except that noted in Footnote 9).

On July 13, 2012, PERB's then Executive Director, Ondray Harris, administratively dismissed Complainants' Motion for Injunction reasoning that: 1) no unfair labor practice complaint had been filed with PERB under which it could consider Complainants' Motion in accordance with D.C. Code § 1-605.02(3); 2) no "disputed case" over the negotiability of a subject of collective bargaining had been brought or alleged under which PERB could consider Complainants' Motion in accordance with D.C. Code § 1-605.02(5); and 3) there had not been an arbitration award issued or an appeal of an award filed under which PERB could consider Complainants' Motion in accordance with D.C. Code § 1-605.02(6). (Admin. Dismissal, at 2-3). PERB's Executive Director further reasoned that PERB could not stay the arbitrations on the alleged basis that the issues being arbitrated were not arbitrable because established PERB precedent required such initial questions of arbitrability to be first brought to and resolved by the arbitrator. *Id.*, at 3 (citing *American Federation of State, County and Municipal Employees, District Council 20, AFL-CIO v. District of Columbia General Hospital and the District of Columbia Office of Labor Relations and Collective Bargaining*, 36 D.C. Reg. 7101, Slip Op. No. 227, PERB Case No. 88-U-29 (1989)). Based on these rationales, the Executive Director found that Complainants failed to "[establish] grounds or authority for the Board to grant a motion to stay the arbitration proceedings cited" and administratively dismissed the Motion. *Id.*

F. Motion for Reconsideration and Respondents' Opposition

On July 27, 2012, Complainants filed a Motion for Reconsideration of the Executive Director's Administrative Dismissal, arguing that his opinion that initial questions of arbitrability

[10] *D.C. v. AFSCME, Local 2921*, Superior Court Case No. 10-CA-4944; *D.C. v. AFSCME, Local 2921*, Superior Court Case No. 10-CA-4943; and *D.C. v. AFSCME, District Council 20*, Superior Court Case No. 10-A-9096, Order, *supra*, at 9.

should be first directed to the arbitrator 1) is contrary to the RUAA and established U.S. Supreme Court and District precedent; 2) is superfluous and not germane to his decision that PERB does not have jurisdiction over the matter; and 3) applies to questions of procedural arbitrability, but not to questions of substantive arbitrability which Complainants assert "have long been held to be decided by the courts." (Motion for Reconsideration, at 1-3) (citing the RUAA, *supra*; *American Federation of Government Employees, Local No. 383, AFL-CIO v. District of Columbia*, 2008 CA 006932 B (D.C. Sup. Ct., April 28, 2009) (holding that "[the court], not an arbitrator, must decide whether the Abolishment Act invalidates the arbitration clause and thereby precludes arbitration of [the complainant union's] claims"); and *AT&T Technologies, Inc. v. Communications Workers of America, et al.*, 475 U.S. 643, 648 (1986) (holding that "whether or not the company was bound to arbitrate, as well as what issues it must arbitrate, is a matter to be determined by the Court on the basis of the contract entered into by the parties")). Relying on the foregoing authority, Complainants urge the Board "to amend the Executive Director's decision and clarify that arbitrability is an initial question for the arbitrator only where jurisdiction with PERB is sought by way of an arbitration review request pursuant to D.C. Official Code § 1-605.02(6) (2001 ed.)." *Id.*, at 3. Complainants further assert that "legal precedent establishes that with regard to issues of arbitrability PERB is limited to its enumerated authority to review arbitration decisions only" and that, accordingly, "PERB's Executive Director[11] is hereby urged to reconsider, clarify and/or amend his Denial to reflect the limited circumstance to which his reference to the arbitrability question being resolved by an arbitrator applies." *Id.*

In their July 31, 2012, Opposition to Complainants' Motion for Reconsideration, Respondents argue that it is unclear what Complainants are asking the Board to reconsider, clarify, or amend. (Opposition to Motion for Reconsider, at 1). Respondents note that Complainants appear to challenge PERB's longstanding precedent that questions of arbitrability should be first addressed by the arbitrator, and then seem to contradict their argument by urging the Executive Director to amend or clarify his Dismissal to emphasize that D.C. Code § 1-605.02(6) mandates that PERB can only address an arbitrability question when an arbitrator has previously made a determination on said question. *Id.*, at 1-2. Speaking to this apparent contradiction, Respondents state:

[11] The Board notes that Complainants first ask *the Board* "to reconsider and issue a clarification and/or amendment of the Executive Director's Denial of Complainants' Amended Motion for Injunctive Relief", but later in the Motion ask "*PERB's Executive Director* ... to reconsider, clarify and/or amend his Denial to reflect the limited circumstance to which his reference to the arbitrability question being resolved by an arbitrator applies." (Motion for Reconsideration, at 1, 3) (emphasis added). In addition, Complainants filed their Motion for Reconsideration under PERB Rule 559, which governs motions for reconsideration of Board opinions. The appropriate Rule to file a motion for reconsideration of an action by the Executive Director is PERB Rule 500.4. Notwithstanding these confusions and errors, the Board assumes that Complainants want the Board to review the Executive Director's Dismissal and has proceeded accordingly.

> Obviously, it is a prerequisite that there be an arbitration award already issued before a party can seek relief before PERB in the context of an arbitration review request. But before there can be an arbitration award, there must be a determination of arbitrability. Before that determination is made, there would be no way for the parties to know whether they would later wish to seek PERB's review. Thus, [Complainants'] request for 'clarification' ... makes no sense and should be denied.

Id., at 2.

In response to Complainants' argument that the Executive Director erred in his analysis because the RUAA voids PERB's longstanding precedent that questions of substantive arbitrability should be first addressed by the arbitrator and instead places that authority with the Court, Respondents contend that "PERB's determination in this case is in keeping with well-established authority" that Judge Zeldon upheld and affirmed when she found that these very questions of arbitrability should have been first "directed to the arbitrators," then appealed to PERB and ultimately to the D.C. Superior Court if Complainants were dissatisfied with the results. *Id.*, at 3-6 (internal citations omitted[12]). Furthermore, Respondents contend that Complainants' argument concerning the Executive Director's failure to distinguish between procedural and substantive arbitrability is irrelevant because "PERB's case law is clear that questions of both procedural and substantive arbitrability concerning CMPA sanctioned arbitrations must be presented to the arbitrator in the first instance." *Id.*, at 4-5 (citing *American Federation of Government Employees, Local 2725 v. District of Columbia Department of Consumer and Regulatory Affairs, et al.*, 59 D.C. Reg. 5041, Slip Op. No. 969, PERB Case No. 06-U-43 (2009) (holding that matters of substantive arbitrability must be initially determined by the arbitrator and that the exclusive method by which a party can challenge the arbitrator's determination is to appeal the decision to PERB pursuant to D.C. Code § 1-605.02(6)); and *District of Columbia Department of Human Services v. Fraternal Order of Police/Department of Human Services Labor Committee*, 50 D.C. Reg. 5028, Slip Op. No. 691, PERB Case Nos. 02-A-04 and 02-A-05 (2002)).

Finally, Respondents note that:

> With respect to the remainder of its [Motion for Reconsideration], the District appears to have lost sight of the fact that it initiated this

[12] To support their contention that "PERB's determination in this case is in keeping with well-established authority", Respondents cites approximately seven (7) PERB cases from 1989-2011 that stand for the principle that "arbitrability is an initial question for the arbitrator to decide if the parties challenge jurisdiction on this ground." (Opposition to Motion for Reconsideration, at 1-7).

> case in an effort to persuade PERB to exercise jurisdiction to enjoin the Union's various arbitration matters on the theory that the grievances are not arbitrable. In its amended motion for a permanent injunction, the District openly admitted that it believes PERB lacks the jurisdiction to grant the requested relief. It should come as no surprise then, that PERB dismissed the motion for an injunction on the grounds that it lacked jurisdiction to issue the requested relief. ... Apparently, the District is dissatisfied with the state of the law; but it does not explain how PERB should exercise jurisdiction over its pre-arbitration claims.

Id., at 2-3. Respondents concluded that Complainants have "presented no compelling reason for PERB to revisit its order dismissing [Complainants'] motion for a permanent injunction" and that "[f]ar from clarifying the decision, [Complainants'] suggested revision is confusing, circular, contrary to law, and entirely unnecessary." *Id.*, at 6. As such, Respondents urge PERB to deny Complainants' Motion for Reconsideration. *Id.*

III. Discussion

Initially, the Board notes that Complainants' Motion for Reconsideration does not challenge the Executive Director's rejection of the three (3) proposed theories that Complainants originally suggested PERB could rely on to exercise jurisdiction over the arbitrations, in which the Executive Director reasoned that: 1) because no unfair labor practice complaint had been filed, PERB could not consider Complainants' Motion in accordance with D.C. Code § 1-605.02(3); 2) because no "disputed case" over the negotiability of a subject of collective bargaining had been brought or alleged, PERB could not consider Complainants' Motion in accordance with D.C. Code § 1-605.02(5); and 3) because there had not been an arbitration award issued and no appeal of an award had been filed, PERB could not consider Complainants' Motion in accordance with D.C. Code § 1-605.02(6). (Admin. Dismissal, at 2-3). The Board therefore affirms the parts of the Executive Director's Dismissal that were based upon that reasoning.[13]

Additionally, the Board finds it is not necessary "to clarify or amend" the Executive Director's Dismissal to emphasize that D.C. Code § 1-605.02(6) limits PERB's authority to review arbitration awards only to instances when there is a previously issued award or decision

[13] The Board agrees with Respondents that even if PERB could consider staying the arbitrations under one or all of Complainants' proposed theories, Complainants' Motion for Injunction would still be dismissed for being "procedurally deficient as it does not comply with many of the initial filing requirements of [PERB] Rules 520, 532, or 538". (Opposition to Motion for Injunction, at 2, Footnote 1).

to review because, as noted above, the Dismissal already makes that point clear in its rejection of Complainants' theory that PERB should consider staying the arbitrations under its powers articulated in D.C. Code § 1-605.02(6). (Admin. Dismissal, at 2-3). Complainants' request on this basis is therefore denied.

In regard to Complainants' contention that the Executive Director's statement that initial questions of arbitrability should be first directed to the arbitrator is contrary to the RUAA and established U.S. Supreme Court and District precedent, the Board notes that the D.C. Court of Appeals has previously held that D.C. Code § 1-605.02(6) in the CMPA preempts the RUAA, which affirms the correctness of the Executive Director's dictum[14] that questions of arbitrability should be first addressed by the arbitrator, then directed to PERB in accordance with D.C. Code § 1-605.02(6), and then appealed to the D.C. Superior Court in accordance with D.C. Code § 1-617.13(c)[15] and the RUAA. *MPD v. FOP*, 997 A.2d 65, *supra*; and *D.C. v. AFGE*, 10 A.3d 764, *supra*. The U.S. Supreme Court, in the case Complainants cited, held that "pursuant to § 301(a) of the Labor Management Relations Act, 29 U.S.C. § 185(a)[16] ... [arbitrability] is a matter to be determined by the Court on the basis of the contract entered into by the parties." *AT&T v. CWA, et al.*, *supra* at 646, 648. However, the statutory "basis of the contract[s] entered into by the parties" in this matter is the CMPA which, again, the D.C. Court of Appeals, the D.C. Superior Court, and PERB have all said requires questions of arbitrability to be first addressed by the arbitrator. *MPD v. FOP*, 997 A.2d 65, *supra*; *D.C. v. AFSCME, Local 2921*, Superior Court Case No. 10-CA-4944; *D.C. v. AFSCME, Local 2921*, Superior Court Case No. 10-CA-4943; and *D.C. v. AFSCME, District Council 20*, Superior Court Case No. 10-A-9096, Order, *supra*, at 9; and *AFCSME v. DCGH, et al.*, *supra*, Slip Op. No. 227, PERB Case No. 88-U-29. Complainants' request on this basis is therefore denied.

In regard to Complainants' contention that initial questions of arbitrability should be first directed to the arbitrator only in cases of procedural arbitrability but not in cases of substantive arbitrability, the Board agrees with Respondents that "PERB's case law is clear that questions of both procedural and substantive arbitrability concerning CMPA sanctioned arbitrations must be

[14] Complainants also contend that the Executive Director's opinion that initial questions of arbitrability should be first directed to the arbitrator is "superfluous and not germane" to his ultimate decision to dismiss their Motion for Injunction. (Motion for Reconsideration, at 2). The Board finds no error in the Executive Director's opinion on this point and equates it with dictum. As such, the Board denies Complainants' request that the opinion be clarified and/or amended.

[15] D.C. Code § 1-617.13(c): "Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain review of such order in the Superior Court of the District of Columbia by filing a request within 30 days after the final order has been issued."

[16] Section 301(a), 61 Stat. 156, 29 U.S.C. § 185(a): "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect of the amount in controversy or without regard to the citizenship of the parties."

presented to the arbitrator in the first instance." (Motion for Reconsideration, at 2); (Opposition to Motion for Reconsideration, at 4-6); and *AFGE v. DCRA, et al., supra*, Slip Op. No. 969, PERB Case No. 06-U-43. Complainants' request on this basis is therefore denied.

The Board agrees with Respondents that Complainants' Motion for Injunction was unripe and was therefore appropriately dismissed. (Opposition to Motion for Injunction, at 5-7). PERB's case law on these questions is quite settled despite Complainants' arguments to the contrary. *Id.* Complainants' path to administrative exhaustion under the CMPA and the RUAA begins by first putting questions of arbitrability to the arbitrator, then appealing the arbitrator's decision to PERB, if necessary, in accordance with D.C. Code § 1-605.02(6), and then appealing PERB's decision to the D.C. Superior Court, if appropriate, in accordance with D.C. Code § 1-617.13(c). *MPD v. FOP*, 997 A.2d 65, *supra*. As such, the Board agrees with Respondents that Complainants have presented no compelling reason[17] in their instant Motion for Reconsideration to justify revisiting, clarifying, or amending the Executive Director's Dismissal of Complainants' Motion for Injunction. (Opposition to Motion for Reconsideration, at 6). Complainants' Motion for Reconsideration is therefore denied.

ORDER

IT IS HEREBY ORDERED THAT:

1. Complainants' Motion for Reconsideration is Denied.

2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

September 26, 2013

[17] Especially in consideration of the facts that Complainants make it clear in their Motion for Injunction that they do not believe PERB has the authority to grant the relief they are seeking, and that part of the basis upon which the Executive Director dismissed said Motion was that PERB indeed does not have jurisdiction to grant the relief Complainants requests.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 12-N-03, Slip Op. No. 1429, was transmitted via File & ServeXpress™ and e-mail to the following parties on this the 10th day of October, 2013.

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Notice: This decision may be formally revised before it is published in the District of Columbia Register. Parties should promptly notify this office of any errors so that they may be corrected before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
University of the District of Columbia Faculty Association/NEA	
Complainant,	PERB Case No. 11-U-02
v.	Opinion No. 1430
University of the District of Columbia,	
Respondent.	

DECISION AND ORDER

I. Statement of the Case

On October 14, 2010, the University of the District of Columbia Faculty Association/NEA ("UDCFA" or "Union") filed an Unfair Labor Practice Complaint against the University of the District of Columbia ("UDC" or "Agency). On November 3, 2010, UDC filed an Answer to Unfair Labor Practice Complaint ("Answer") and Motion for Judgment on the Pleadings And/Or Motion to Strike. On November 8, 2010, the Union filed an Opposition to Motion to Dismiss or Strike. On February 22, 2012, the Union filed an Amended Unfair Labor Practice Complaint ("Amended Complaint"). On March 22, 2012, the Union filed a Motion to Disqualify Respondent's Counsel.

On March 22, 2012, former Executive Director Ondray Harris issued an Executive Director's Administrative Dismissal ("Dismissal"), dismissing the Union's Complaint, on the grounds that portions of the Complaint involved protected discussions or evidence under Board Rule 500.4. On April 2, 2012, the Union filed a Motion for Reconsideration of the Executive

Director's Administrative Dismissal. On May 1, 2012, UDC filed an Opposition to Motion for Reconsideration of Executive Director's Administrative Dismissal.

On May 24, 2012, former Executive Director Harris issued an Order Denying Reconsideration of Executive Director's Administrative Dismissal, finding that the Union did not assert that the Dismissal was unreasonable or unsupported by Board precedent. On June 6, 2012, the Union filed an Appeal from the Executive Director's Administrative Dismissal to the Board. On July 11, 2012, UDC filed an Opposition to the Appeal from the Executive Director's Administrative Dismissal.

On August 24, 2012, the Board issued a Decision and Order, overturning the Executive Director's Administrative Dismissal, on the basis "that the protections of Rule 558 cease once the parties have reached a tentative agreement." *University of the District of Columbia/NEA v. University of the District of Columbia*, 59 D.C. Reg. 12677, Slip Op. No. 1319 at p. 3, PERB Case No. 11-U-02 (2012). The Board found that the "issue of whether UDC's actions rise to the level of a violation of the CMPA is a matter best determined after the establishment of a factual record through an unfair labor practice hearing." *Id.* at p. 3.

On October 2, 2012, Johnine P. Barnes withdrew as counsel for UDC. On January 3, 2012, UDC filed an Answer to Amended Unfair Labor Practice Complaint.

On January 8, 2013, a hearing was held before Hearing Examiner Lois Hochhauser ("Hearing Examiner"). Both Parties submitted post-hearing briefs. On June 13, 2013, the Hearing Examiner issued a Report and Recommendation ("Report"), which is before the Board for disposition. The Parties did not file Exceptions to the Hearing Examiner's Report and Recommendation.

II. Hearing Examiner's Report and Recommendation

The Hearing Examiner identified the issues as the following:

> (1) Did the University commit an unfair labor practice when President Sessoms failed to recommend to the University's Board of Trustees that it ratify the Bridge Agreement?
> (2) Did the University commit an unfair labor practice by sending an email on September 24, 2010 to UDC employees, including bargaining unit members?
> (3) If a ULP was committed by the University, what relief should be ordered?

(Report at 2).

The Hearing Examiner found the following undisputed facts:

Complainant is the exclusive bargaining representative of UDC faculty holding permanent appointment, including librarians and media specialists. Respondent is the public post-secondary institution of the District of Columbia. The parties have negotiated six Master Agreements. The most recent Agreement, i.e., the Sixth Master Agreement, was scheduled to expire in 2008. At the time of this proceeding, that Agreement had not been replaced by a subsequent agreement.

The efforts of the parties to negotiate a Seventh Master Agreement were unsuccessful and led to the filing of a ULP, an interest arbitration demand and a negotiability appeal by Complainant. Julio Castillo, former Executive Director of PERB, met with the parties in 2010 in order to assist them in resolving some of the disputes. However, these efforts were not unsuccessful.

Mark Farley, then UDC's Vice President of Human Resources and its Chief Negotiator, and Dr. Mohammed El-Khawas, then President of UDCFA and its Chief Negotiator began to meet informally in June 2010 to negotiate what was termed as a "Bridge Agreement." It was called a "Bridge Agreement" because the parties considered it to be a "bridge between the Sixth Master Agreement and a successor agreement." Mr. Farley was authorized by then UDC President Alan Sessoms to negotiate this Agreement on behalf of the University and he so informed Dr. El-Khawas.

Both Dr. El-Khawas and Mr. Farley agreed there was a degree of urgency in this effort because neither wanted to "wait another four years to get an agreement." The meetings took place at a restaurant and changes were made directly on the Sixth Master Agreement so that continuing language appeared in one color and new language in another color. In August 2010, after about six meetings, they completed drafting the Bridge Agreement, which then required ratification by UDCFA membership and the UDC Board of Trustees. The parties recognized that the Bridge Agreement required "compromise" on the part of both parties. After the document was finalized, it required ratification by the UDCFA and the UDC Board of Trustees. It was presented for ratification without signatures. Dr. El-Khawas and Mr. Farley anticipated that after ratification, individuals would be assigned by each party to sign the Bridge Agreement. They also agreed that additional work would be required by the parties after ratification. According to Dr. El-Khawas, they agreed that:

> [O]nce the agreement was ratified, a committee would be formed, and half of the representatives [would] be appointed by the Association; the other half by the administration. And we [the Parties] that the committee will get together and draft a report to the

> university president as well as the association president to serve for finalizing the criteria, the guidelines and a memo of understanding. (Tr, 66).

UDCFA members ratified the Bridge Agreement on or about August 18, 2010.

In April 2010, the Budget Control Act [("freeze legislation")] was introduced in the Council of the District of Columbia. The Act imposed wage freezes on most government agencies, including UDC. The legislation was approved by the Council on May 26, 2010, and signed on July 2, 2010, subject to congressional review. The Act froze with-in grade salary increases and cost of living adjustments at UDC, stating in pertinent part:

> Notwithstanding any other provision of law, collective bargaining agreement...settlement, whether specifically outlined or incorporated by reference, all fiscal year 2010 salary schedules shall be maintained during fiscal year 2011, and no increase in salary or benefits, including increases in negotiated salary, wage, and benefits provisions and negotiated salary schedules, shall be provided fiscal year 2011 from the fiscal year 2010 salary and benefits levels.

Both parties represented that they were unaware of the legislation during negotiations, although the Union asserts that "Mr. Farley knew or should have known that the District intended to freeze wage increases and step increases for Fiscal Year 2011." Respondent denies the assertion. It is undisputed that the issues of the legislation was not raised or discussed by either Dr. El-Khawas or Mr. Farley during negotiations.

At its September 22, 2010 meeting, the UDC Board deferred voting on the Bridge Agreement, citing the freeze legislation. UDC declined the Union's recommendation that it could ratify other portions of the Bridge Agreement.

On September 24, 2010, Mr. Farley sent the following memorandum to UDC union and non-union employees:

> The UDC administration and Board were unable to ratify the [Bridge Agreement] when they met on 9/22/10. Subsequent to the time representatives of the University and the NEA negotiated the Bridge Agreement, the D.C. Council passed a budget act that forbids the University from giving any Within Grade Increases (steps) during FY 2010 and forbids any agreement to provide additional compensation or benefits in FY 2011. It would violate this law to

> agree to the terms in the Bridge Agreement. The Administration will be pursuing binding interest arbitration concerning the successor to the Sixth Master Agreement that expired in 2008, and other matters that pending before [PERB]. We are reaching out to the NEA leadership to try to find ways to expedite these processes. We are hopeful that these government bodies will now expedite a resolution of this long standing impasse and enable us to move forward with a New Collective Bargaining Agreement for the future. (Ex U-33).
>
> The Council exempted UDC from the freeze in the 2011 Supplement Budget Support Act, which the Council enacted on January 27, 2011 and which became law on May 13, 2011. The effective date of Supplemental Act was April 8, 2011.
>
> At its June 8, 2011 meeting, the UDC Board voted not to ratify the Bridge Agreement. Mr. Farley notified Dr. El-Khawas of this decision and offered to resume negotiations and to distribute "available money in order to keep moving forward toward comprehensive bargaining in the future and resolve our differences back to 2008." UDCFA did not accept this offer.

(Report at 3-5) (citations omitted).

Before the Hearing Examiner, Complainant argued that UDC committed two unfair labor practices during the Bridge Agreement negotiation and ratification time period. (Report at 5). The Union's first assertion is that an unfair labor practice was committed by UDC when President Sessoms failed to urge the UDC Board to ratify the Bridge Agreement, because the CMPA "required him to 'endorse tentative agreements to the trustees in negotiations that are subject to his control' and he failed to do this." *Id.* The Union contended "that since Mr. Farley was authorized by Dr. Sessoms to negotiate the Bridge Agreement, Dr. Sessoms was obligated to recommend its ratification to the UDC Board." *Id.* The Union's second argument that UDC committed an unfair labor practice was based on a September 24, 2010, email sent by Mr. Farley to UDC employees, which included bargaining unit employees. *Id.* The Hearing Examiner stated: "The Union contends that the email was an impermissible communication by UDC directly with bargaining unit members. The Union contends that some of the information in the email was inaccurate or incorrect, which it argues adds to the egregiousness of UDC's conduct." *Id.*

Regarding UDC's position, concerning the Union's first ULP allegation, the Hearing Examiner stated:

> It [UDC] argues that it negotiated the Bridge Agreement in good faith. It asserts that both parties were unaware of the freeze legislation during the time they were engaged in negotiations. UDC contends that President

> Sessoms's failure to urge ratification to the UDC Board is not a ULP because others urged the UDC Board to reject the Bridge Agreement. UDC contends that although Dr. Sessoms initially agreed with the terms, he later changed his mind and that he had the right to express his opinion to the Board of Trustees.[...][T]he Bridge Agreement was subject to ratification by the Board of Trustees, and the decision of the UDC Board was not determined by Mr. Farley as the Chief Negotiator or by Dr. Sessoms as the UDC President. Respondent maintains that in April 2011, after the University had been exempted from the wage freeze, the UDC Board's Budget and Finance Committee considered the Bridge Agreement and "rejected it for substantive reasons." At the June 2011 UDC Board meeting, the Budget and Finance Committee reported its view to the UDC Board which after discussion voted not to ratify it.

(Report at 5-6). UDC's position on the Union's second ULP allegation is that "Mr. Farley's email was sent to both bargaining unit members and non-union employees and did not seek to undermine the Union's status as the exclusive bargaining agent." (Report at 6).

With respect to the Union's allegation that UDC committed a ULP when Mr. Farley acted in bad faith because he was aware of or should have been award of the freeze legislation during negotiations, the Hearing Examiner found "[t]here is no evidence, either direct or circumstantial, that would support a conclusion that Mr. Farley was aware of the freeze legislation during negotiations or that he acted in bad faith throughout the negotiations." (Report at 9). The Hearing Examiner further stated: "[T]the gravamen of this charge is that Dr. Sessoms, who had authorized Mr. Farley to negotiate on behalf of UDC in these negotiations, was obligated to recommend ratification of the Bridge Agreement to the Board and that his failure to do so constituted an unfair labor practice." *Id.* The Hearing Examiner found:

> [T]hat Dr. Sessoms authorized Mr. Farley to negotiate on UDC's behalf; that Mr. Farley met with Dr. Sessoms prior to the start of negotiations and did not proceed on any matter in which Dr. Sessoms raised an objection; and that Mr. Farley reviewed the final document with Dr. Sessoms and counsel, and that although concerns were raised by Dr. Sessoms and counsel, all agreed it would be better for UDC to ratify the Bridge Agreement than to proceed with binding arbitration.

Id. In determining whether Dr. Sessoms was required to recommend ratification to the UDC Board, or in the alternative, was prohibited from expressing his concerns or even his dissatisfaction with the Agreement to the UDC Board, the Hearing Examiner applied *Teamsters Local Unions No. 639 and 730 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO v. District of Columbia Public Schools,* 43 D.C. Reg. 6633, Slip Op. No. 400, PERB Case No. 93-U-29 (1994). The Hearing Examiner distinguished the present case from *DCPS*, as the parties in *DCPS* had reached agreement and were bound by arbitration awards. (Report at 10). The Hearing Examiner found two grounds on which *DCPS* was distinguishable. *Id.* First, the Hearing Examiner stated: "[T]here could be no

binding agreement until the Bridge Agreement was ratified by both parties." The second ground was that the underlying allegation of the ULP was that UDC failed to proceed to the next step in negotiations. *Id.* The Hearing Examiner found that, notwithstanding the Union's allegation that UDC was to forward the matter to the City Council for approval, "UDC did take the required next step by forwarding the Bridge Agreement to the UDC Board for review and ratification." *Id.*

The Hearing Examiner reviewed the record, "considered the larger context as well as circumstantial evidence," and found the following:

> The only evidence presented on this issue [of Dr. Sessoms's recommendations to the UDC Board] was Mr. Farley's testimony that at the UDC Board's committee meeting which he attended with Dr. Sessoms, he heard Dr. Sessoms state that the Bridge Agreement "wasn't enough to move us along." The Hearing Examiner finds that Dr. Sessoms did make that statement. However she [the Hearing Examiner] does not conclude that this statement standing alone or statements similar to it, if made, is evidence [of] bad faith on the part of UDC and constitutes a ULP. According to Dr. El-Khawas, the parties agreed that after ratification of the Agreement, committees would be appointed to finalize criteria, establish guidelines and draft a memorandum of understanding. Thus, the parties recognized that there was still considerable work that had to be accomplished after ratification, and Dr. Sessoms's statement that the Bridge Agreement did not move the parties far enough along may be reasonably interpreted to mean that it did not completely resolve important issues. The statement, by itself, cannot be considered untrue. There is no requirement that an individual, even a negotiator, cannot express sincere concerns or reservations about terms of a negotiated agreement, particularly one in which certain matters will not be addressed until after ratification and one which the parties agree required serious compromise. The evidence does support the finding that both Mr. Farley and Dr. Sessoms attended the UDC Board's Budget and Finance Committee meeting in April 2011, that at this meeting Dr. Sessoms made the comment quoted above, that at this meeting at least three other individuals expressed reservations about the Bridge Agreement, expressing concerns about its lack of accountability features, about the evaluation process and student outcomes provisions, and about the ability of UDC to meet the financial commitments due to its depleted resources. There is no evidence in the record, either direct or circumstantial, regarding statements made by Dr. Sessoms, other than the one statement in the record. There was no evidence that the concerns raised at the committee meeting, the recommendation of the committee to the UDC Board to reject the agreement, and/or the UDC Board's decision not to ratify the agreement was based or even influenced by Dr. Sessoms.

(Report at 10). Further, the Hearing Examiner found that "the [UDC] Board deferred consideration of the Bridge Agreement on advice of counsel based on the freeze legislation." *Id.* The Hearing Examiner stated, "[T]here is no evidence that he [UDC's counsel] gave his advice if (sic) bad faith or that the UDC Board accepted the advice in bad faith." (Report at 10-11).

The Hearing Examiner rejected the Union's assertion that the UDC Board could have considered parts of the Agreement not affected by the freeze legislation. (Report at 11). The Hearing Examiner found that "there was no evidence presented that the UDC Board was required to proceed in the manner or that its failure to do so constituted bad faith." *Id.* The Hearing Examiner found that the Union did not meet its burden of proof that Respondent committed a ULP. *Id.*

The second ULP concerned the email sent by Mr. Farley to UDC employees. (Report at 12). The Hearing Examiner found that Mr. Farley's "intention in sending the email was to affirm to UDC employees that despite the current problems, the University wanted to move forward work with Complainant on resolving these issues." *Id.* Further, the Hearing Examiner stated: "The statement itself appears to be a straightforward and conciliatory attempt to notify employees, particularly bargaining unit members of the status of negotiations." *Id.* The Hearing Examiner concluded: "Even if, as the Union asserts, Mr. Farley was not entirely accurate in his interpretation of the freeze legislation, errors alone do not constitute bad faith." (Report at 11). The Hearing Examiner applied the Board's holding in *AFSCME Council 20 v. District of Columbia, et al.*, 36 D.C. Reg. 427, Slip Op No. 200, PERB Case No. 88-U-32 (1988), and found that Mr. Farley's email was "nothing more than the employer communicating to its employees on the status of negotiations, which does not, standing alone, constitute a violation of the D.C. Code." (Report at 11-12). The Hearing Examiner found that the Union did not meet its burden of proof that UDC committed a ULP in violation. (Report at 12).

Based on the record, the Hearing Examiner concluded that UDC did not commit any ULP. *Id.* The Hearing Examiner recommended that the Complaint be dismissed with prejudice. *Id.*

III. Discussion

No Exceptions were filed by the Parties. "Whether exceptions have been filed or not, the Board will adopt the hearing examiner's recommendation if it finds, upon full review of the record, that the hearing examiner's 'analysis, reasoning and conclusions' are 'rational and persuasive.'" *Council of School Officers, Local 4, American Federation of School Administrators v. D.C. Public Schools*, 59 D.C. Reg. 6138, Slip Op. No. 1016 at p. 6, PERB Case No. 09-U-08 (2010) (quoting *D.C. Nurses Association and D.C. Department of Human Services*, 32 D.C. Reg. 3355, Slip Op. No. 112, PERB Case No. 84-U-08 (1985)).

The Board determines whether the Hearing Examiner's Report and Recommendation is "reasonable, supported by the record, and consistent with Board precedent." *American Federation of Government Employees, Local 1403 v. District of Columbia Office of the Attorney*

General, 59 D.C. Reg. 3511, Slip Op. No. 873, PERB Case No. 05-U-32 and 05-UC-01 (2012). The Board will affirm a hearing examiner's findings if they are reasonable and supported by the record. *See American Federation of Government Employees, Local 872 v. D.C. Water and Sewer Authority*, Slip Op. No. 702, PERB Case No. 00-U-12 (2003).

Pursuant to Board Rule 520.11, "[t]he party asserting a violation of the CMPA, shall have the burden of proving the allegations of the complaint by a preponderance of the evidence." The Board has held that "issues of fact concerning the probative value of evidence and credibility resolutions are reserved to the Hearing Examiner." *Council of School Officers, Local 4, American Federation of School Administrators v. District of Columbia Public Schools*, 59 DC Reg. 6138, Slip Op. No. 1016 at p. 6, PERB Case No. 09-U-08; *Tracy Hatton v. FOP/DOC Labor Committee*, 47 D.C. Reg. 769, Slip Op. No. 451 at p. 4, PERB Case No. 95-U-02 (1995).

In light of these standards, the Board reviews the Hearing Examiner's findings and conclusions below.

A. Duty to bargain in good faith

Complainant alleged that UDC violated D.C. Code § 1-617.04(a)(1) and (5) by "bargaining in bad faith by failing to disclose the freeze legislation until after the [Complainant] Association had ratified the Bridge Agreement and significantly after the University [of the District of Columbia] had reached a tentative agreement," by "bargaining in bad faith by the President [Dr. Sessom] and Chief Negotiator's [Mr. Farley's] failure to endorse the agreement to the Trustees," and by "bargaining in bad faith by refusing to implement the portions of the tentative agreement not prohibited by the wage freeze legislation despite the Trustee' failure to reject the tentative agreement." (Amended Complaint at 6-7).

The Hearing Examiner found that UDC did not commit the above ULPs, because there was a lack of evidence of bad faith and that UDC had taken reasonable steps towards bargaining the Bridge Agreement, considering the impact of the freeze legislation. (Report at 9-10). The Hearing Examiner declined to accept the Union's argument that UDC knew or should have known about the freeze legislation and, therefore, bargained in bad faith. (Report at 10). The Hearing Examiner stated: "Complainant was required to establish by a preponderance of direct or circumstantial evidence that Respondent acted in bad faith, or that its actions were motivated by anti-Union animus and/or to undermine the Union's relationship with its members." (Report at 9).

The Hearing Examiner asserted without any citation to PERB precedent a requirement of bad faith for a finding of an unfair labor practice. In fact PERB has ruled that "a showing of bad faith is not required in order to establish an unfair labor practice. A conclusion that a party failed to bargain in good faith does not equate to a conclusion that the party acted in bad faith." *American Federation of State, County and Municipal Employees, District Council 20 v. District of Columbia Government*, Slip Op. No. 1387 at p.5, PERB Case No. 08-U-36 (2013). Despite the deference the Board provides the Hearing Examiner as a fact-finder, the Hearing Examiner's analysis and conclusions must be made in accordance with Board precedent. *See American*

Federation of Government Employees, Local 1403 v. District of Columbia Office of the Attorney General, 59 D.C. Reg. 3511, Slip Op. No. 873, PERB Case No. 05-U-32 and 05-UC-01 (2012). The Board rejects the Hearing Examiner's analysis, as the Board's precedent clearly demonstrates that a "showing of bad faith is not required" when determining whether an unfair labor practice has occurred. *See American Federation of State, County and Municipal Employees, District Council 20*, Slip Op. No. 1387.

Despite this misstatement of the law, the Board finds that the Hearing Examiner's factual findings are adequately supported by the record.

In her analysis, the Hearing Examiner relied upon *Teamsters Local Unions No. 639 and 730 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO v. District of Columbia Public Schools*, 43 D.C. Reg. 6633, Slip Op. No. 400, PERB Case No. 93-U-29 (1994), in which the Board held:

> While the duty to bargain in good faith imposes no duty to reach agreement, it includes the obligation to take reasonable efforts to insure the effectiveness of agreements actually reached.[...] In the public sector, where the effectiveness of a negotiated or awarded compensation settlement depends on its acceptance by the legislative authority, we have no doubt that management's obligation includes meticulous adherence to the statutory procedures for securing that acceptance or, as provided by the CMPA [...] for rejection by the Council and a return to the parties for renegotiation with specific reasons for the rejection.

Slip Op. No. 400 at p.1-2. In addition, the Board has stated, "In interpreting the 'good faith' standard in the course of collective bargaining, the National Labor Relations Board ("NLRB") examines the totality of a party's conduct during bargaining, both at and away from the table, to determine if the negotiations have been used to frustrate or avoid mutual agreement. Any single factor, standing alone, will generally not demonstrate bad faith." *American Federation of Government Employees v. D.C. Department of Disability Services*, 59 D.C. Reg. 10771, Slip Op. No. 1284, PERB Case No. 09-U-56 (2012) (citations omitted). The Board has further held:

> To establish surface bargaining, no one factor is determinative. Rather, the totality of a party's actions during collective bargaining must be examined to determine whether or not a party's conduct establishes a purpose or intent to frustrate or avoid reaching an agreement. *See Joy Silk Mills, Inc. v. NLRB*, 185 F.2d 732 (D.C. Cir. 1950). Any single factor, standing alone, usually will not demonstrate bad faith. Also, the fact that extensive negotiations fail to produce a contract does not justify an inference that the employer is engaged in bad faith bargaining. *NRLB v. Fitzgerald Mills Corp.*, 133 NLRB 877, enforced, 313 F.2d 260 (2nd Cir. 1963), cert. denied, 375 US 834 (1963).

American Federation of Government Employees, Local 2741 v. D.C. Department of Recreation and Parks, Slip Op. No. 588 at p. 2, PERB Case No. 98-U-16 (1999).

In the present case, the Hearing Examiner did not find any purpose or intent to frustrate or avoid reaching an agreement. (Report at 9-10). The Hearing Examiner found that Mr. Farley was unaware of the freeze legislation pending, while negotiating the Bridge Agreement. (Report at 10). Despite Dr. Sessoms's actions, and the Bridge Agreement's non-endorsement by Dr. Sessoms, the non-ratification by the UDC Board was found to be due to several other factors, including the effect of the freeze legislation on the Bridge Agreement and the UDC Board's counsel's advice. (Report at 10-11). UDC appears to have taken reasonable steps towards reaching agreement, but for the freeze legislation that impacted the Parties negotiations. *See Teamsters Local Unions No. 639 and 730,* Slip Op. No. 400. Therefore, the Board finds that the Complainant did not meet its burden of proof that UDC committed a ULP.

B. <u>Communication to employees</u>

Complainant alleged that UDC violated D.C. Code § 1-617.04(a)(1) and (5) by "bargaining in bad faith by dealing directly with bargaining unit members concerning the impact of the freeze legislation." (Amended Complaint at 7). The Hearing Examiner erroneously required the Complainant to prove by a preponderance of the evidence that Respondent acted with bad faith. As stated above, there is no bad faith requirement for finding an unfair labor practice has been committed. *American Federation of State, County and Municipal Employees, District Council 20 v. District of Columbia Government,* Slip Op. No. 1387, PERB Case No. 08-U-36 (2013). The Board finds that the Hearing Examiner's factual finding of this allegation is supported by the record, but rejects the Hearing Examiner's bad faith analysis. *See id.*

In *AFSCME Council 20 v. District of Columbia, et al.*, 36 D.C. Reg. 427, Slip Op. No. 200, PERB Case No. 88-U-32 (1988), the Board held that communication from an agency to its employees regarding its collective bargaining position was not a ULP because in the communication the employer "neither dealt directly with employees, disparaged the Union to its members, undermined it, nor coerced or interfered with employees in their right to bargaining collectively." *See also Fraternal Order of Police/Metropolitan Police Department v. D.C. Metropolitan Police Department*, 48 D.C. Reg. 8530, Slip Op. No. 649, PERB Case No. 99-U-27 (2001) ("In cases where the Board has considered the issue of direct dealing, it has ruled that mere communication with membership is not violative of the Comprehensive Merit Personnel Act (CMPA).") The Hearing Examiner's factual finding, concerning Mr. Farley's email was "[t]he statement itself appears to be a straightforward and conciliatory attempt to notify employees, particularly bargaining unit members of the status of negotiations." (Report at 11). The Board finds based on the factual finding of the Hearing Examiner that Mr. Farley's email was mere communication with the membership. *See Fraternal Order of Police/Metropolitan Police Department,* Slip Op. No. 649. Based on the Board's precedent on the matter, the Board finds that the Complainant has not met its burden of proof that the Respondent committed a ULP. *Id.*

IV. Conclusion

The Board has reviewed the record, and has determined that the Hearing Examiner's findings of fact are supported by the record. The Board in its analysis of these facts and its relevant case law finds that Complainant has not met its burden of proof that Respondent committed unfair labor practices. Therefore, the Board dismisses the Complaint with prejudice.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Complaint is dismissed with prejudice.
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEES RELATIONS BOARD

Washington, D.C.

September 26, 2013

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 11-U-02 was transmitted to the following Parties on this the 25th of October, 2013:

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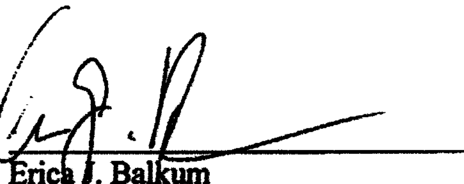

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Notice: This decision may be formally revised before it is published in the District of Columbia Register. Parties should promptly notify this office of any errors so that they may be corrected before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
Dianna Flowers-Hinnant, et al.	PERB Case No. 04-S-03
Complainant,	Opinion No. 1431
v.	
American Federation of State, County and Municipal Employees, Local 2095, et al.	
Respondent.	

DECISION AND ORDER

I. Statement of the Case

On March 3, 2004, a Standards of Conduct Complaint ("Complaint") was filed by Diana Flowers-Hinnant, Janet B. Hill, Mark Leggett, Ronnie McFadden, and Glenda Hill ("Complainants") against the American Federation of State, County and Municipal Employees, Local 2095 and certain officers ("Respondents").[1] The Complaint asserted that the Respondents violated the provisions of the Comprehensive Merit Personnel Act ("CMPA"), governing the Standards of Conduct for a labor organization.

On March 24, 2004, the Respondents filed an Answer ("Answer") and a Motion to Dismiss for Failure to File Complaint Timely ("Motion to Dismiss"). On April 5, 2004, the Complainants filed a Response to Motion to Dismiss for Failure to File Complaint Timely

[1] The officers named in the Complaint are Willie Smith, removed President; Brenda Mathews-Davis, Vice-President; Christopher Leach, removed Secretary; Henry Nichols, President; Ed Ford, Area Director; and Cynthia Perry, Staff Representative.

("Motion Response") with PERB, but did not serve a copy on the Respondents.

On July 24, 2006, the Executive Director sent the matter to a hearing before Hearing Examiner Sean Rodgers ("Hearing Examiner"). On August 4, 2006, the Executive Director provided the Complainants until August 21, 2006, to correct the filing deficiency. On August 28, 2006, Respondents' representative notified PERB that Complainants had not corrected the filing deficiency, because Complainants had not served the Respondents.

A hearing was held on December 6, 2006. The Complainants did not appear. The Respondents presented three motions to the Hearing Examiner. On March 16, 2007, the Board received the Hearing Examiner's Report and Recommendation ("Report"), which is before the Board for disposition.

II. Hearing Examiner's Report and Recommendation

As stated above, the Complainants did not appear at the hearing. Respondents asserted three motions before the Hearing Examiner: (1) Motion to Dismiss for Failure to File Complaint Timely; (2) Motion to Dismiss for Failing to Show Cause as to Why Respondents were not Served with Complainant's Motion Response; and (3) Motion to Dismiss for Complainants Failure to Appear and Prosecute the Complaint. (Report at 2-3).

A. Motion to Dismiss for Failure to File Complaint Timely

Before the Hearing Examiner, the Respondents reasserted their Motion to Dismiss. (Report at 2). Respondents argued that Board Rule 544.4 required the Complainants to file their Complaint within 120 days of the alleged violation. *Id.* Notwithstanding, Respondents argued that only one allegation appeared in the Complaint that did meet the Board's timeliness requirement, but was "insufficient to state a standards of conduct claim." *Id.* Based on the above, Respondent asserted that the Board did not have jurisdiction to hear the March 24, 2004, Complaint. *Id.*

The Hearing Examiner found "the facts establish that the Complaint is untimely and the Respondents' Motion to Dismiss should be granted." *Id.*

B. Motion to Dismiss for Failing to Show Cause as to Why Respondents were not Served with Complainant's Motion Response

At the hearing, Respondents argued that "the Complainants had failed to show cause why the Respondents were not served with a copy of the April 5, 2004, Response to Motion to Dismiss for Failure to File Complaint Timely." (Report at 3). Respondents asserted that Board Rule 501.12 required the Complaintants to serve the document on the Respondents, but had not by the time of the hearing. *Id.* The Respondents argued that the Complainants received notice from the Executive Director of the filing deficiency, and that the Complainants never corrected the deficiency by serving the Respondents and filing a certificate of service with PERB. *Id.*

The Hearing Examiner found that "no certificate of service from the Complainants establishing service of the subject documents is contained in the file." *Id.* Therefore, the Hearing Examiner recommended "the Respondents' motion to dismiss on these grounds should be granted." *Id.*

C. Motion to Dismiss for Complainants Failure to Appear and Prosecute the Complaint

Respondents argued that the failure of the Complainants to appear at the hearing constituted, pursuant to Board Rule 550.19, a failure to prosecute the Complaint. (Report at 3). Respondents moved to have the Complaint dismissed with prejudice. *Id.* The Hearing Examiner stated: "The PERB staff and the Hearing Examiner attempted to locate and to contact the Complainants on the date of the hearing in an extraordinary effect to ensure the Complainants were provided the opportunity to put on their case. The Hearing Examiner delayed the start of the hearing in an extraordinary effort to ensure the Complainants were provided the opportunity to put on their case." *Id.*

The Hearing Examiner found "[t]he record establishes that the Complainants have failed to prosecute their case and the failure to appear at hearing arguable constitutes an abandonment of the claim." *Id.* The Hearing Examiner recommended that Board grant the Respondents' motion to dismiss.

D. Hearing Examiner's Recommendations

The Hearing Examiner recommended that the Respondents' motions be granted as follows:

1. The March 24, 2004, Complaint is untimely and should be dismissed because the PERB is without jurisdiction to hear the case pursuant to PERB Rule 544.4.
2. The Complainants have failed to prove service of the April 5, 2004, *[Complainants'] Response to Motion to Dismiss for Failure to File Complaint Timely* on the Respondents, and the Complaint should be dismissed with prejudiced based on the Executive Director's August 4, 2006, letter to the Complainants and PERB Rule 501.12; and
3. The record establishes that the Complainants have failed to prosecute their case and by failing to appear at hearing they have abandoned their claim, and the Complaint should be dismissed with prejudice based on PERB Rule 550.19.

III. Discussion

No Exceptions were filed. "Whether exceptions have been filed or not, the Board will adopt the hearing examiner's recommendation if it finds, upon full review of the record, that the hearing examiner's 'analysis, reasoning and conclusions' are 'rational and persuasive.'" *Council of School Officers, Local 4, American Federation of School Administrators v. D.C. Public*

Schools, 59 D.C. Reg. 6138, Slip Op. No. 1016 at p. 6, PERB Case No. 09-U-08 (2010) (quoting *D.C. Nurses Association and D.C. Department of Human Services*, 32 D.C. Reg. 3355, Slip Op. No. 112, PERB Case No. 84-U-08 (1985)).

The Board determines whether the Hearing Examiner's Report and Recommendation is "reasonable, supported by the record, and consistent with Board precedent." *American Federation of Government Employees, Local 1403 v. District of Columbia Office of the Attorney General*, 59 D.C. Reg. 3511, Slip Op. No. 873, PERB Case No. 05-U-32 and 05-UC-01 (2012). The Board will affirm a hearing examiner's findings if they are reasonable and supported by the record. *See American Federation of Government Employees, Local 872 v. D.C. Water and Sewer Authority*, Slip Op. No. 702, PERB Case No. 00-U-12 (2003).

Pursuant to Board Rule 520.11, "[t]he party asserting a violation of the CMPA, shall have the burden of proving the allegations of the complaint by a preponderance of the evidence." The Board has held that "issues of fact concerning the probative value of evidence and credibility resolutions are reserved to the Hearing Examiner." *Council of School Officers, Local 4, American Federation of School Administrators v. District of Columbia Public Schools*, 59 DC Reg. 6138, Slip Op. No. 1016 at p. 6, PERB Case No. 09-U-08; *Tracy Hatton v. FOP/DOC Labor Committee*, 47 D.C. Reg. 769, Slip Op. No. 451 at p. 4, PERB Case No. 95-U-02 (1995).

In light of these standards, the Board reviews the Hearing Examiner's findings and conclusions below.

A. Motion to Dismiss for Failure to File Complaint Timely

As a threshold issue, the Board must have jurisdiction in order to hear a standards of conduct complaint. Board Rule 544.4 provides: "A complaint alleging a violation under this section shall be filed not later than one hundred and twenty (120) days from the date the alleged violation(s) occurred." The Board's Rules proscribing time limits for filing appeals are mandatory and jurisdictional matters. *See D.C. Public Employee Relations Bd. v. D.C. Metropolitan Police Dept.*, 593 A.2d 641 (D.C. 1991) ("The time limits for filing appeals with administrative adjudicative agencies, as with courts, are mandatory and jurisdictional matters.")

The Complaint was filed on March 4, 2004. The Complaint lists a timeline of allegations from January 2, 2003, until November 13, 2003. (Complaint at 4-6). The Hearing Examiner's determination that the majority of the allegations did not meet Board Rule 544.4's 120-day requirement is reasonable.

Notwithstanding, the Hearing Examiner found only one allegation may have been timely, which was the allegation that at a November 13, 2003 appeal hearing, concerning the prior removal of two of the Respondents (Willie Smith and Christopher Leach) from union leadership, Mr. Smith and Mr. Leach did not appear. (Report at 2). The Hearing Examiner found that this allegation alone did not constitute a violation of the CMPA's Standards of Conduct for a labor organization. *Id.*

For the remaining allegation that fell within the 120 days, Board Rule 544.4 states: "Any individual(s) aggrieved because a labor organization has failed to comply with the Standards of Conduct for labor organizations may file a complaint with the Board for investigation and appropriate action." The Standards of Conduct for a labor organization are set forth in the D.C. Code § 1-617.03(a)(1)-(4). The Complaint makes no correlation of how the remaining allegation that two of the Respondents did not attend their own appeal hearing violates any of Standards of Conduct for a labor organization. The Board finds that the Complainants have failed to state a claim for which relief may be granted under the CMPA. The Board finds the Hearing Examiner's recommendation to dismiss the Complaint is reasonable.

B. Motion to Dismiss for Failing to Show Cause as to Why Respondents were not Served with Complainant's Motion Response

The Hearing Examiner found that Complainants did not properly serve Respondents with a Response to the Respondents' Motion to Dismiss, as required by the Executive Director. (Report at 3). The Executive Director sent the Complainants a deficiency letter on September 4, 2006, citing Board Rule 501.12, for failing to properly serve Complainants' Response to Respondents' Motion to Dismiss and filing a proper certificate of service with PERB. PERB received no response. On September 27, 2006, the Executive Director sent a second letter, which stated, "you need to show cause as to why this case should not be dismissed based on your failure to comply with Board Rule 501.12. Your show cause argument should be presented to the Hearing Examiner on the rescheduled hearing date." The Hearing Examiner found that the Complainants never corrected the filing deficiency. (Report at 3). Therefore, the Board finds that the Hearing Examiner was reasonable in recommending that the Board grant the Respondents' Motion to Dismiss.

C. Motion to Dismiss for Complainants' Failure to Appear and Prosecute the Complaint

The Hearing Examiner recommended dismissal of the Complaint on the grounds that the Complainants had failed to appear and prosecute the Complaint. Board Rule 550.19 states, "If a party fails to prosecute a cause of action, the Hearing Examiner may recommend that the Board or Executive Director dismiss the action with prejudice or rule against the defaulting party." The Complainants' did not appear for the hearing, nor did the Complainants' contact PERB or file anything subsequent to their nonappearance at the hearing. The Hearing Examiner's recommendation to dismiss the Complaint on the grounds that the Complainants' did not appear and prosecute their Complaint is reasonable.

IV. Conclusion

The Board finds that the Hearing Examiner's findings and conclusions are reasonable, supported by the record, and consistent with Board precedent. Therefore, the Board adopts the Hearing Examiner's recommendation that the Complaint be dismissed with prejudice.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Standards of Conduct Complaint is dismissed with prejudice.
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

Washington, D.C.

September 26, 2013

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 04-S-03 was transmitted to the following Parties on this the 25th day of October, 2013:

Dianna Flowers-Hinnant
815 Copley Avenue
Waldorf, MD 20602-2802

via U.S. Mail

Margo Pave
Zwerdling, Paul, Kahn & Wolly, P.C.
1025 Connecticut Avenue, N.W.
Washington, D.C. 20036

via U.S. Mail

Erica J. Balkum
Attorney-Advisor
Public Employee Relations Board
1100 4th Street, S.W.
Suite E630
Washington, D.C. 20024

Notice: This decision may be formally revised before it is published in the District of Columbia Register. Parties should promptly notify this office of any errors so that they may be corrected before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
Doctors' Council of the District of Columbia,	PERB Case No. 11-U-22
Complainant,	Opinion No. 1432
v.	
District of Columbia Department of Youth and Rehabilitation Services,	
Respondent.	

DECISION AND ORDER

I. Statement of the Case

On February 22, 2011, the Doctors' Council of the District of Columbia ("DCDC" or "Complainant") filed an Unfair Labor Practice Complaint against the District of Columbia Department of Youth and Rehabilitation Services ("DYRS" or "Respondent"), alleging violations of the Comprehensive Merit Personnel Act ("CMPA"), D.C. Code §§ 1-617.04(a)(1) and (5).

On March 10, 2011, DYRS filed an Answer to the Complaint ("Answer"), denying the Complaint's allegations and requesting that the Board dismiss the Complaint.

On October 29, 2011, the Board denied the Respondent's request to dismiss the Complaint on the grounds that the pleadings alone were insufficient for the Board to resolve the disputed issues. *Doctors' Council of the District of Columbia v. District of Columbia Department of Youth and Rehabilitation Services*, 59 D.C. Reg. 6865, Slip Op. No. 1208, PERB Case No. 11-U-22 (2011). The Board ordered an unfair labor practice hearing before a Board-appointed hearing examiner.

A hearing took place on August 24 and September 19, 2012, before Hearing Examiner Lois Hochhauser ("Hearing Examiner"). (Report at 2). The Parties presented testimonial and documentary evidence at the hearing, and submitted post-hearing briefs to the Hearing Examiner. *Id.*

The Hearing Examiner's Report and Recommendation ("Report") was received by the Board and sent to the Parties on June 17, 2013, providing the Parties until the close of business July 8, 2013, to submit Exceptions to the Report. On July 8, 2013, Complainant requested a one-day extension to file Exceptions, because Complainant's representative asserted that she had experienced a hand injury that constituted good cause for an extension. On July 9th and 10th, 2013, Complainant filed Exceptions. On July 22, 2013, Respondent requested an extension to file an Opposition to Complainant's Exceptions. On July 25, 2013, the Acting Executive Director denied Complainant's motion for a one-day extension. The grounds for the Acting Executive Director's denial was that Complainant was put on notice by PERB's former Executive Director Ondray Harris that no further extensions would be granted to Complainant in the present case, after the former Executive Director Harris had granted Complainant's four consented-to motions for extensions and one unconsented-to motion for extension during the Parties' post-hearing briefing. On August 20th and August 26th, 2013, Complainant filed a motion for reconsideration of the Acting Executive Director's denial of the motion for a one-day extension to file Exceptions. On August 27, 2013, the Acting Executive Director denied Complainant's motion on the grounds that the Complainant had not shown cause as determined by the Executive Director, pursuant to Board Rule 501.2. Complainant's Exceptions to the Hearing Examiner's Report are deemed untimely filed, and therefore, will not be considered.

The Hearing Examiner's Report and Recommendation is before the Board for disposition.

II. Hearing Examiner's Report and Recommendation

A. Factual Findings

The Complaint arises out of a reduction-in-force ("RIF") taken at DYRS and impact and effects ("I&E") bargaining. The factual findings have been summarized by the Hearing Examiner as follows:

> 1. Complainant is the exclusive bargaining representative of physicians, dentists and podiatrists employed by Respondent and certain other agencies of the District of Columbia.
>
> 2. Respondent is the District of Columbia Government agency which administers detention, commitment and aftercare services for youth held in its facilities or residing in the DC community. As part of its mission, DYRS provides medical services.

3. The parties are signatories to a collective bargaining agreement (Agreement).

4. The Office of Labor Relations and Collective Bargaining (OLRCB), the District of Columbia entity responsible for labor relations, notified the Union that a RIF was contemplated at DYRS in July 2010. Dean Aqui, Esq., OLRCB supervisory attorney-advisor, represented the Respondent in matters relating to this RIF. He received and responded to requests for documents and information submitted by the Union. On July 14, 2010, he emailed Ms. Kahn and explained that his earlier efforts to notify the union of the proposed RIF had not been successful. He stated that DYRS was proposing a RIF "for budgetary and efficiency reasons." He provided Ms. Kahn with the RIF notice letter. At the time the RIF had not been approved.

5. The Union requested I&E bargaining. The first bargaining session took place on August 11, 2010. At the time of the first meeting, no RIF notice had been issued. At the meeting, DYRS informed the Union that it intended to replace bargaining unit medical officers, ie. Doctors, with a non-bargaining unit supervisory medial officer (MSS), referred to as "replacement position." The replacement position was a supervisory position. The three RIFed positions were non-supervisory positions.

6. Complainant requested certain information at the meeting and memorialized the request on August 18, 2010. The request included approximately 25 items, including a copy of the job description for the replacement position, all reports related to the proposed RIF and a report completed by Dr. Ronald Shansky, with whom Respondent had contracted to review its operations.

7. Respondent provided approximately 12 of the items requested between August 19, 2010 and September 3, 2010.

8. The Shansky Report consists of a letter dated February 7, 2010 to Dr. Andrea Weisman of the Youth Services Center....

9. On August 13, 2010, Robert Hildum, DYRS Interim Director, requested that the City authorize DYRS to conduct a RIF....[1]

[1] In pertinent part, Mr. Hildum relied upon the Shansky Report and decided to "reconfigure" staff resources. The memorandum stated: "DYRS would eliminate the existing three (3) Medical Officer positions and hire one (1) Supervisory Medical Officer who would provide clinical guidance, supervision and oversight of activities performed by the Physician Assistants (Pas) and Medical Records Technician." (Report at 5).

10. The Director of the D.C. Department of Human Resources authorized the RIF on August 18, 2010.

11. On August 20, 2010, OLRCB provided Complainant with a copy of the Administrative Order authorizing the RIF.

12. From August 2010 through November 2010, Complainant continued to request documents and Agency continued to respond to those requests. Respondent did not provide all of the documents requested.

13. By letter dated August 20, 2010, Agency notified [the three (3) medical officers] ... that they would be RIFed from Agency, effective September 24, 2010.

14. On September 16, 2010, Agency notified [the medical officers] ... that the effective date of separation was changed to October 22, 2010. The change was based on OLRCB's recognition that two of the doctors may not have received the requisite 30 day notice.

15. On September 16, 2010, Complainant asked to meet during the week of September 20. It [Complainant] also sought additional information.

16. On September 17, 2010, the Union filed a grievance with Respondent regarding the RIF, the elimination of bargaining unit positions and other matters it alleged violated the Agreement and applicable regulations. Respondent denied the grievance on October 19, 2010.

17. The second I&E bargaining session took on October 12, 2010. The parties did not reach consensus at the end of the session and did not execute any documents.

18. The RIF, implemented on October 22, 2010, eliminated the three bargaining unit medical officer positions....

19. Dr. Samia Altaf, Supervisory Medical Officers (SMO), was hired on or about October 25, 2010 to fill the newly created replacement nonbargaining unit position.

20. On November 30, 2010, OLRCB attorney James Langford informed Ms. Kahn that OLRCB determined that the grievance was not arbitrable and had so notified FMCS...[by letter] dated November 23, 2010, stat[ing] that Respondent was under no "legal obligation" to arbitrate the matter. Respondent took the position that the Abolishment Act, D.C. Official Code Section 1-624.08, "invalidated the contractual grievance and arbitration procedures related to RIFs.["]

> In support of its position, OLRCB cited *American Federation of Government Employees, Local 383 v. The District of Columbia*, Case No. 2008 CA 006932B issued by the D.C. Superior Court on April 26, 2009, in which the Court denied a Union's motion to compel arbitration regarding a RIF, concluding that the Abolishment Act rendered the arbitration clause of a collective bargaining agreements (sic) "inapplicable ...by providing the exclusive and non-negotiable procedures to which an employee aggrieved by a RIF is entitled."

(Report at 4-7) (citations omitted).

B. Hearing Examiner's Recommendations

The Hearing Examiner determined that the Complainant's position was that the Respondent committed unfair labor practices, when Respondent: "(1) RIFed the three bargaining unit members and replaced them with a non-bargaining unit physician who, it contends, performs the same duties as the RIFed doctors, (2) refused and/or failed to provide the Union with material it requested so that it could properly represent its members; (3) implemented the RIF before I&E bargaining was completed; and (4) refused to arbitrate the grievance." (Report at 7).

Before the Hearing Examiner, the Respondent argued that it did not commit any unfair labor practices; because the RIF was a management right, and necessary and cost-efficient. (Report at 8). Respondent asserted that it had provided all relevant information, and that it did not implement the RIF until after the completion of I&E bargaining. *Id.* The Respondent contended that it did not act in bad-faith by refusing the Union's proposals. *Id.* As to arbitrating the matter, the Respondent argued that the issue was non-arbitrable and relied upon a Superior Court decision, and that the two Superior Court decisions that were presented by the Union were issued after OLRCB had refused to arbitrate. (Report at 8-9).

The Hearing Examiner determined the issues for resolving the Complaint's allegations were the following:

1. Did Complainant meet its burden of proof that Respondent committed a ULP by failing to engage in good faith bargaining before implementing the RIF?
2. Did Complainant meet its burden of proof that Respondent committed a ULP by failing to provide the Union with relevant and necessary information that it requested?
3. Did Complainant meet its burden of proof that Respondent committed a ULP by replacing bargaining unit employees with non-bargaining unit members?
4. Did Complainant meet its burden of proof that Respondent committed a ULP by refusing to select an arbitrator?

(Report at 2). The Hearing Examiner's conclusions and recommendations are discussed below in the order they were addressed.

1. Did Complainant meet its burden of proof that Respondent committed a ULP by failing to engage in good faith bargaining before implementing the RIF?

The Hearing Examiner found that the Parties disputed whether the RIF occurred prior to completion of I&E bargaining. (Report at 10). The Hearing Examiner found that two I&E bargaining sessions occurred on August 20 and October 10, 2010. *Id.* While the initial RIF notices provided a separation date of September 24, 2010, the "Respondent issued a second letter on September 16, 2010, changing the effective date to October 22, 2010." *Id.* Complainant sought to meet with the Respondent during the week of September 20, however, the meeting did not take place until October 12. *Id.*

The Hearing Examiner found that "[t]he record did not establish that the Union sought additional sessions before its September 20 request, that it asked that the October 12 [meeting] be moved to an earlier day, or that it sought additional sessions after October 12." (Report at 11). As a result, the Hearing Examiner determined that "Complainant did not meet its burden of proving that Respondent committed an unfair labor practice by refusing to engage in impact and effects bargaining or by implementing the RIF" before completion of I&E bargaining. (Report at 12).

2. Did Complainant meet its burden of proof that Respondent committed a ULP by failing to provide the Union with relevant and necessary information that it requested?

The Hearing Examiner found that Mr. Aqui was "the individual who responded to the information requests." (Report at 13). Based on Mr. Aqui's testimony, the Hearing Examiner found that some requests were not completed due to error, some were delayed or incomplete due to DYRS, and that "Mr. Aqui also made determinations of relevancy." *Id.* The Hearing Examiner found that Mr. Aqui provided credible testimony on the issue of the information requests. *Id.* The Hearing Examiner concluded "[u]pon a careful analysis of the evidence and argument presented, ... DCDC did not meet its burden of proof with sufficient evidence, direct or circumstantial, that Respondent acted in bad faith, or that its conduct was motivated by anti-Union animus, or an effort to undermine the Union." (Report at 14).

3. Did Complainant meet its burden of proof that Respondent committed a ULP by replacing bargaining unit employees with non-bargaining unit members?

The Hearing Examiner found that the newly-created position of Supervisory Medical Officer ("SMO") took on duties of the RIFed employees, as well as supervised staff, which were not included in the RIFed employees' job duties. (Report at 14). No evidence was presented that any other positions, either hired or contracted by the Respondent, performed work that was previously done by the RIFed employees. *Id.* The Hearing Examiner determined that the

Complainant did not meet its burden of proof that the Respondent committed an unfair labor practice. *Id.*

4. Did Complainant meet its burden of proof that Respondent committed a ULP by refusing to select an arbitrator?

The Hearing Examiner found, based on Mr. Aqui's testimony, that the Respondent had relied upon a D.C. Superior Court decision, regarding its obligation to arbitrate, and that Respondent's reliance was credible and "reasonable under the circumstances." (Report at 15). The Hearing Examiner decided "that DCDC did not meet its burden of proof with a preponderance of the evidence, direct or circumstantial, that Respondent acted in bad faith, or that its conduct was motivated by anti-Union animus, or an effort to undermine the Union on this issue." *Id.*

The Hearing Examiner found on all four issues that the Complainant did not meet its burden of proof with a preponderance of the evidence. *Id.* As a result, the Hearing Examiner recommended that the Complaint be dismissed in its entirety. *Id.*

III. Discussion

As discussed above, no Exceptions were timely filed for the Board's consideration. "Whether exceptions have been filed or not, the Board will adopt the hearing examiner's recommendation if it finds, upon full review of the record, that the hearing examiner's 'analysis, reasoning and conclusions' are 'rational and persuasive.'" *Council of School Officers, Local 4, American Federation of School Administrators v. D.C. Public Schools*, 59 D.C. Reg. 6138, Slip Op. No. 1016 at p. 6, PERB Case No. 09-U-08 (2010) (quoting *D.C. Nurses Association and D.C. Department of Human Services*, 32 D.C. Reg. 3355, Slip Op. No. 112, PERB Case No. 84-U-08 (1985)).

The Board determines whether the Hearing Examiner's Report and Recommendation is "reasonable, supported by the record, and consistent with Board precedent." *American Federation of Government Employees, Local 1403 v. District of Columbia Office of the Attorney General*, 59 D.C. Reg. 3511, Slip Op. No. 873, PERB Case No. 05-U-32 and 05-UC-01 (2012). The Board will affirm a hearing examiner's findings if they are reasonable and supported by the record. *See American Federation of Government Employees, Local 872 v. D.C. Water and Sewer Authority*, Slip Op. No. 702, PERB Case No. 00-U-12 (2003).

Pursuant to Board Rule 520.11, "[t]he party asserting a violation of the CMPA, shall have the burden of proving the allegations of the complaint by a preponderance of the evidence." The Board has held that "issues of fact concerning the probative value of evidence and credibility resolutions are reserved to the Hearing Examiner." *Council of School Officers, Local 4, American Federation of School Administrators v. District of Columbia Public Schools*, 59 DC Reg. 6138, Slip Op. No. 1016 at p. 6, PERB Case No. 09-U-08; *Tracy Hatton v. FOP/DOC Labor Committee*, 47 D.C. Reg. 769, Slip Op. No. 451 at p. 4, PERB Case No. 95-U-02 (1995).

In light of these standards, the Board reviews the Hearing Examiner's findings and conclusions below.

A. Whether Complainant met its burden of proof that Respondent committed an unfair labor practice by failing to engage in good-faith impact and effects bargaining before implementing the RIF?

In Slip Op. No. 1208, the Board found that the Complaint alleged that Respondent violated D.C. Code §§ 1-617.04(a)(1) and (5) by "failing to engage in good faith impact and effects bargaining." *Doctors' Council of the District of Columbia v. District of Columbia Department of Youth and Rehabilitation Services*, 59 D.C. Reg. 6865, Slip Op. No. 1208 at p.1, PERB Case No. 11-U-22 (2011) (quoting Complaint at 9). The Board referred the issue of "whether the RIF occurred prior to the completion of the I&E bargaining" for determination of whether Respondent had failed to engage in good-faith I&E bargaining. Slip Op. No. 1208 at p.6.

As noted above, the Hearing Examiner found that, prior to the October 22, 2010, implementation of the RIF, "[t]he record did not establish that the Union sought additional sessions before its September request, that it asked that the October 12 [meeting] be moved to an earlier day, or that it sought additional sessions after October 12." (Report at 11). The Hearing Examiner found that the Respondent provided sufficient information at the October 12 meeting for the Complainant to engage in I&E bargaining. (Report at 12). The Hearing Examiner concluded that "[t]he evidence did not establish that at that time, Complainant lacked sufficient information to engage in meaningful bargaining or that Respondent refused to consider Complainant's input." *Id.* The Hearing Examiner concluded that the Respondent met its obligation to meet with the Union prior to the implementation of the RIF. (Report at 11). The Hearing Examiner found that "there was insufficient evidence to establish that Respondent did not engage in good faith impact and effects bargaining." (Report at 12).

RIFs are a management right under D.C. Code § 1-617.08. *See, e.g., FOP/DOCLC v. Dept. of Corrections*, 49 D.C. Reg. 11141, Slip Op. No. 692, PERB Case No. 01-N-01 (September 30, 2002) ("After reviewing D.C. Law 12-124 'Omnibus Personnel Reform Act of 1998,' the Board finds that this Act amended the CMPA by, *inter alia*, excluding RIF procedures and policies as proper subjects of bargaining."). The Board has long held that "an Employer violates the duty to bargain in good faith by refusing to bargain, upon request, over the impact and effects of a RIF and by refusing to produce documents related to the RIF." *AFSCME District Council 20, Local 2921, v. D.C. Dept. of General Services*, Slip Op. No. 1320, 09-U-63 (2012); *FOP/DOCLC v. DOC*, 52 D.C. Reg. 2496, Slip Op No. 722, PERB Case Nos. 01-U-21, 01-U-28, 01-U-32 (August 13, 2003); *see also Teamsters Unions No. 639 and 730, et al., v. D.C. Public Schools*, 38 D.C. Reg. 96, Slip Op. No. 249, PERB Case No. 89-U-17 (1990).

The Board has held that meetings where the Agency requests only input "[are] not sufficient to fulfill the duty and meet the standard for bargaining over the impact of a management right." *AFGE Local 383 v. D.C. Dept. of Mental Health*, 52 D.C. Reg. 2527, Slip Op. No. 753, PERB Case No. 02-U-16 (2004); *see also Int'l Brotherhood of Police Officers,*

Local 446 v. D.C. General Hospital, 39 D.C. Reg. 9633, Slip Op. No. 322, PERB Case No. 91-U-14 (1992); *FOP/MPDLC v. Metropolitan Police Dept.*, 47 D.C. Reg. 1449, Slip Op. No. 607, PERB Case No. 99-U-44 (2000); *FOP/DOCLC v. Dept. of Corrections*, 49 D.C. Reg. 8937, Slip Op. No. 679, PERB Case Nos. 00-U-36 and 00-U-40 (2002). The Board has found that an agency's notice to the union and its meeting with the union to receive its "input" was insufficient to meet its bargaining duty. *International Brotherhood of Police Officers v D.C. General Hospital*, 29 D.C. Reg. 9633, Slip Op. No. 322 (1992).

The Hearing Examiner evaluated the credibility of the witnesses and made factual findings and conclusions based on the record that are reasonable and in accordance with Board precedent. Therefore, the Board adopts the Hearing Examiner's recommendation to dismiss the Complaint's allegation that Respondent committed an unfair labor practice by failing to engage in good-faith impact and effects bargaining.

B. Whether Complainant met its burden of proof that Respondent committed an unfair labor practice by failing to provide the Union with relevant and necessary information that it requested?

In Slip Op. No. 1208, the Board stated that the Parties disputed "whether DYRS denied DCDC's requests for information" and that the pleadings did not establish that the information requested was "both relevant and necessary" for the Union to represent its members. *Id.* at 7. The Board referred these issues to the Hearing Examiner. *Id.*

The Hearing Examiner found that there were numerous requests for information. (Report at 12). The Hearing Examiner stated: "It is undisputed that the Union requested a great deal of information and documentation, and that it [the Union] did not receive all of the documents and information it requested. In addition, some responses were delayed and/or provided piecemeal." *Id.* The Hearing Examiner found that a number of information requests were fulfilled, but a number of requests were not completed or only partially completed. *Id.* The Hearing Examiner relied upon the testimony of Mr. Aqui from OLRCB, who asserted responsibility for handling the information requests. (Report at 13). The Hearing Examiner found that "[t]he delay and completeness [of the information requests] were a result of DYRS, and that he [Mr. Aqui] provided documents to the Union when he received them," that Mr. Aqui "may have overlooked some items or misunderstood some requests," that "some of the documents did not exist," and some documents Mr. Aqui determined were not relevant. *Id.*

The Hearing Examiner stated: "In order to make a determination that Respondent committed a ULP on this matter, there must be a finding of bad faith on its part." (Report at 14). The Hearing Examiner determined based upon the evidence and arguments presented by the Parties that "DCDC did not meet its burden of proof with sufficient evidence, direct or circumstantial, that Respondent acted in bad faith, or that its conduct was motivated by anti-Union animus, or an effort to undermine the Union." *Id.*

The Board has held that materials and information relevant and necessary to its duty as a bargaining unit representative must be provided upon request. *See Fraternal Order of*

Police/Metropolitan Police Department Labor Committee v. Metropolitan Police Department, Slip Op. No. 835, PERB Case No. 06-U-10 (2006). The Board's precedent is that an agency is obligated to furnish requested information that is both relevant and necessary to a union's role in: (1) processing of a grievance; (2) an arbitration proceeding; or (3) collective bargaining. *See id.*; *see also American Federation of Government Employees, Local 2741 v. District of Columbia Department of Parks and Recreation*, 50 D.C. Reg. 5049, Slip Op. No. 697, PERP Case No. 00-U-22 (2002); *Teamsters Local Unions 639 and 670, International Brotherhood of Teamsters, AFL-CIO v. District of Columbia Public Schools*, 54 D.C. Reg. 2609, Slip Op. No. 804, PERB Case No. 02-U-26 (2002). Further, "an Employer violates the duty to bargain in good faith by refusing to bargain, upon request, over the impact and effects of a RIF and by refusing to produce documents related to the RIF." *AFSCME District Council 20, Local 2921, v. D.C. Dept. of General Services*, Slip Op. No. 1320, 09-U-63 (2012); *FOP/DOCLC v. DOC*, 52 D.C. Reg. 2496, Slip Op No. 722, PERB Case Nos. 01-U-21, 01-U-28, 01-U-32 (August 13, 2003); *see also Teamsters Unions No. 639 and 730, et al., v. D.C. Public Schools*, 38 D.C. Reg. 96, Slip Op. No. 249, PERB Case No. 89-U-17 (1990).

The Hearing Examiner asserted without any citation to PERB precedent a requirement of bad faith for a finding of an unfair labor practice. In determining whether an unfair labor practice has occurred, "a showing of bad faith is not required in order to establish an unfair labor practice. A conclusion that a party failed to bargain in good faith does not equate to a conclusion that the party acted in bad faith." *American Federation of State, County and Municipal Employees, District Council 20 v. District of Columbia Government*, Slip Op. No. 1387 at p.5, PERB Case No. 08-U-36 (2013). Despite the deference the Board provides the Hearing Examiner as a factual-finder, the Hearing Examiner's analysis and conclusions must be made in accordance with Board precedent. *See American Federation of Government Employees, Local 1403 v. District of Columbia Office of the Attorney General*, 59 D.C. Reg. 3511, Slip Op. No. 873, PERB Case No. 05-U-32 and 05-UC-01 (2012). In the present case, the Hearing Examiner made her conclusion that no unfair labor practice had been committed, because the Complainant had not met its burden of proof that Respondent acted in bad faith. (Report at 14). There is no heightened burden on the Complainant to establish that the Agency's failure to provide requested information that is relevant and necessary to the Union's role was due to the Agency acting in bad faith. *AFSCME, District Council 20*, Slip Op. No. 1387 at p.5. The Hearing Examiner erred in her analysis of PERB precedent by requiring the Complainant to prove by a preponderance of the evidence that the Respondent acted in bad faith. The Board rejects the Hearing Examiner's analysis.

In addition, the Hearing Examiner's factual conclusions are unclear as to the individual information requests, as the Hearing Examiner did not provide any detailed discussion of the information requests: "The record contains numerous examples of items requested that were not provided or not completely provided. It would probably triple the size of this Report if such itemization was provided and it is not necessary in analyzing this issue." (Report at 12). Further, the Hearing Examiner does not provide an analysis of DYRS's actions in providing information. The Hearing Examiner relies primarily on Mr. Aqui's testimony as to his actions as representative for the Respondent, not the actions of the Respondent. The Hearing Examiner's factual conclusions regarding the Respondent's actions are unclear.

The Board concludes that the Hearing Examiner's factual findings are unclear and her analysis was inappropriately based on a bad faith standard, which is not in accordance with Board precedent. *See AFSCME, District Council 20,* Slip Op. No. 1387 at p.5. Therefore, the Board remands to the Hearing Examiner the issue of whether the Agency committed an unfair labor practice when it failed to provide information requested by the Union.

C. Whether Complainant met its burden of proof that Respondent committed an unfair labor practice by replacing bargaining unit employees with non-bargaining unit members?

The Board referred to the Hearing Examiner the issue of "whether DYRS contracted or hired additional positions to perform functions previously conducted by the bargaining unit medical officers." Slip Op. No. 1208 at p. 7. The Complainant alleged that the RIFed employees' positions were being replaced with non-bargaining unit positions or contracted out. (Complaint at 9). Based on the record before her, the Hearing Examiner concluded that the SMO position included supervisory duties not performed by the RIFed medical officers, and that no other positions were created or contracted to replace the bargaining unit positions. (Report at 14). The Hearing Examiner recommended that the Complaint based on these allegations be dismissed, as the Complainant had not met its burden of proof by a preponderance of the evidence. *Id.*

As stated above, the Board has held that "issues of fact concerning the probative value of evidence and credibility resolutions are reserved to the Hearing Examiner." *Council of School Officers, Local 4, American Federation of School Administrators v. District of Columbia Public Schools*, 59 DC Reg. 6138, Slip Op. No. 1016 at p. 6, PERB Case No. 09-U-08; *Tracy Hatton v. FOP/DOC Labor Committee*, 47 D.C. Reg. 769, Slip Op. No. 451 at p. 4, PERB Case No. 95-U-02 (1995). The Board finds that the Hearing Examiner's findings are reasonable and supported by the record. Therefore, the Board adopts the Hearing Examiner's recommendation that the Complaint's allegations, concerning replacement of bargaining unit positions with non-bargaining unit positions, be dismissed.

D. Whether Complainant met its burden of proof that Respondent committed a ULP by refusing to select an arbitrator?

The Board found that the Parties did not agree on whether the matter was appropriate for arbitration. Slip Op. No. 1208 at p.7. The Board found that the Parties did not dispute that DYRS refused to select an arbitrator. *Id.* The Board referred to the Hearing Examiner the issues of "whether the matter was suitable for arbitration;" "whether the Agency was required to select an arbitrator," and "whether FMCS put the arbitration matter on hold." *Id.* The Hearing Examiner determined that the Respondent relied upon D.C. Superior Court Judge Leibovitz's opinion that a RIF could not be arbitrated and that the Abolishment Act had prevented the Parties from arbitrating, despite a contractual provision in the Parties CBA. (Report at 15). The Hearing Examiner found that the Respondent did not dispute that the Complainant had raised two subsequent D.C. Superior Court decisions by other judges with contrary conclusions. *Id.* The Hearing Examiner stated: "The issue is not whether Respondent made the correct decision

but whether it acted in good faith in relying on the Leibovitz decision. Since that is the only relevant factor, it is not necessary to weight the merits of the Leibovitz decision against the merits of the subsequent decisions." *Id.* Based on the Hearing Examiner's determination that Mr. Aqui's testimony was credible and "his rationale reasonable under the circumstances," the Hearing Examiner determined that the Union did not meet its burden of proof by a preponderance of evidence, direct or circumstantial, that Respondent acted in bad faith, or that its conduct was motivated by anti-Union animus, or an effort to undermine the Union on this issue. *Id.*

The Hearing Examiner applied a bad faith standard without any citation to Board precedent. As discussed above, there is no Board precedent requiring a showing of bad faith for finding an unfair labor practice. *See American Federation of State, County and Municipal Employees, District Council 20 v. District of Columbia Government*, Slip Op. No. 1387 at p.5, PERB Case No. 08-U-36 (2013). Further, the Hearing Examiner's factual conclusions and analysis are unclear. Therefore, the Board finds that the Hearing Examiner's findings and conclusions are not supported by Board precedent. The Board remands to the Hearing Examiner the issue of whether the Agency committed an unfair labor practice by refusing to select an arbitrator for this matter.

E. Timeliness of the Complaint's allegations

On review of the Hearing Examiner's Report, the Board has found that Hearing Examiner has discussed allegations occurring across several months, e.g. information requested throughout August 2010 through November 2010. (Report at 6). In addition, the Hearing Examiner stated: "It would probably triple the size of this Report if such itemization [of the information requests] was provided and it is not necessary in analyzing this issue." (Report at 12). As neither Party raised timeliness issues, the Hearing Examiner did not make any factual determinations of specific dates of the Complaint's allegations. Notwithstanding, upon its review of this case, these factual determinations are necessary for the Board to determine its jurisdiction over the Complaint's original allegations. Therefore, on remand, the Board orders the Hearing Examiner to make factual determinations as to when the cause of action for the Complainant's allegations initially occurred. *See Fraternal Order of Police/Metropolitan Police Department Labor Committee v. D.C. Metropolitan Police Department*, Slip Op. No. 1372, PERB Case No. 11-U-52 ("[T]he Board has the authority to raise jurisdiction before a Decision and Order becomes final.").

The Board received the Complaint on February 22, 2013, and therefore the Board can only decide unfair labor practice allegations that occurred 120 days prior to the filing date of the Complaint. *See* Board Rule 520.4 (stating "Unfair labor practice complaints shall be filed not later than 120 days after the date on which the alleged violations occurred."); *see also Fraternal Order of Police/Metropolitan Police Department v. D.C. Metropolitan Police Department*, Slip Op. No. 1372, PERB Case No. 11-U-52 (2013) (finding "Pursuant to Board Rule 520.4, the Board only has authority to review unfair labor practice allegations that took place during the 120 days preceding the filing of an unfair labor practice complaint"). The Board has held that Board Rule 520.4 is jurisdictional and mandatory. *Hoggard v. D.C. Public Schools and*

AFSCME Council 20, Local 1959, 43 D.C. Reg. 1297, Slip Op. No. 352, PERB Case No. 93-U-10 (1993), *aff'd sub nom., Hoggard v. Public Employee Relations Board*, MPA-93-33 (D.C. Super. Ct. 1994), *aff'd*, 655 A.2d. 320 (D.C. 1995). As the Hearing Examiner's Report is unclear regarding the specific dates of the Complaints allegations, the Board orders the Hearing Examiner to make these factual findings.

IV. Conclusion

The Board has reviewed the Hearing Examiner's Report and Recommendation to determine whether it is reasonable, based on the record, and supported by Board precedent. The Board adopts the Hearing Examiner's Report and Recommendation in part, and remands it in part, as discussed above.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Complaint's allegation that Respondent failed to engage in impact and effects bargaining prior to the implementation of the RIF is dismissed with prejudice.
2. The Complaint's allegation that Respondent replaced bargaining unit positions with non-bargaining unit positions is dismissed with prejudice.
3. The Hearing Examiner shall make factual findings and conclusions as to whether the Respondent failed to furnish relevant and necessary information at the request of the Complainant. The Hearing Examiner may conduct further proceedings, if necessary.
4. The Hearing Examiner shall make factual findings and conclusions as to whether the Respondent's refusal to arbitrate was an unfair labor practice. The Hearing Examiner may conduct further proceedings, if necessary.
5. The Hearing Examiner shall make factual findings and conclusions as to whether any of the remaining allegations were untimely.
6. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

Washington, D.C.

September 26, 2013

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 11-U-22 was transmitted to the following Parties on this the 25th day of October, 2013:

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