

***District of Columbia*****REGISTER****HIGHLIGHTS**

- DC Council schedules a public hearing on Bill 20-21, Council Contract Review Repeal Act of 2013
- Department of Health proposes changes to the guidelines for reporting cancer
- Office of the State Superintendent of Education announces funding availability for the Farm Field Trip Grant
- Department of Health Care Finance requests comments on the proposed amendments to the Home and Community Based Waiver for Persons with Intellectual and Developmental Disabilities
- Department of Small and Local Business Development announces funding availability for the Small Business Improvement Grant

The March 28, 2014 DC Register has two parts. Refer to Volume 61 - No. 14 - Part 2 to review the final rulemaking for the District of Columbia Construction Codes Supplement of 2013.

DISTRICT OF COLUMBIA REGISTER

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ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-295

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

MARCH 14, 2014

To approve, on an emergency basis, Modification No. M0020 to Contract No. DCTO-2008-C-0135 to provide IT Staff Augmentation Services and to authorize payment for the services received and to be received under the contract.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Modification No. M0020 to Contract No. DCTO-2008-C-0135 Approval and Payment Authorization Emergency Act of 2014".

Sec. 2. Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), and notwithstanding the requirements of section 202 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.02), the Council approves Modification No. M0020 to Contract Number DCTO-2008-C-0135 to provide IT Staff Augmentation Services and authorizes payment in an amount not to exceed \$20 million for services received and to be received under the contract.

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Chief Financial Officer 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. 4. Effective date.

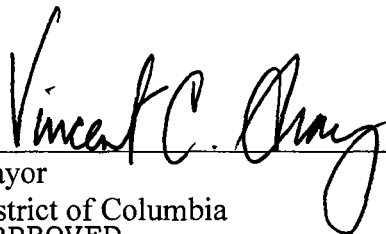
This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in

ENROLLED ORIGINAL

section 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).



Chairman
Council of the District of Columbia



Mayor
District of Columbia
APPROVED
March 14, 2014

ENROLLED ORIGINAL

AN ACT
D.C. ACT 20-296

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
MARCH 14, 2014

To approve, on an emergency basis, Modifications Nos. 16 and 17 to Contract No. CFOPD-08-C-048 with RSI Solutions, Inc. to continue to provide technical support personnel and eTaxpayer Service Center rental/hosting in support of the Integrated Tax System of the District of Columbia government and to authorize payment for the services received and to be received under the contract modifications.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Contract No. CFOPD-08-C-048 Contract Modifications Approval and Payment Authorization Emergency Act of 2014".

Sec. 2. Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), and notwithstanding the requirements of section 202 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.02), the Council approves Modifications Nos. 16 and 17 to Contract No. CFOPD-08-C-048 with RSI Solutions, Inc. to provide technical support personnel and eTaxpayer Service Center rental/hosting in support of the Integrated Tax System of the District of Columbia government and authorizes payment in the amount of \$2,014,064.26 for the services received under the contract modifications from February 1, 2014, through August 1, 2014.

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Chief Financial Officer 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. 4. Effective date.

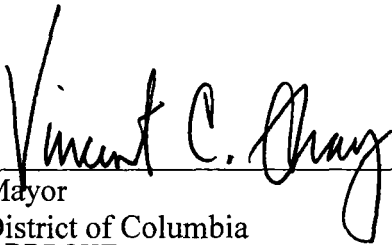
This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in

ENROLLED ORIGINAL

section 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).



Chairman
Council of the District of Columbia



Mayor
District of Columbia
APPROVED
March 14, 2014

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-297

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

MARCH 14, 2014

To amend, on an emergency basis, the Advisory Neighborhood Commissions Boundaries Act of 2012 to authorize the District of Columbia Auditor to resume quarterly allotments to Advisory Neighborhood Commission 5C and forgive previous disallowances occurring before December 31, 2012.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Advisory Neighborhood Commission 5C Allotments Authorization Emergency Amendment Act of 2014".

Sec. 2. Section 4(c) of the Advisory Neighborhood Commissions Boundaries Act of 2012, effective July 13, 2012 (D.C. Law 19-157; D.C. Official Code § 1-309.03, note), is amended by adding a new subsection (c-1) to read as follows:

"(c-1) Notwithstanding section 16 of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-58; D.C. Official Code § 1-309.13)("section 16"), the allotments authorized to Advisory Neighborhood Commission 5C shall not be withheld due to disallowances occurring before December 31, 2012. These disallowances shall be forgiven and the District of Columbia Auditor shall resume quarterly allotments to ANC 5C, pursuant to section 16, beginning the first quarter after the effective date of this subsection."

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Budget Director 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. 4. Effective date.

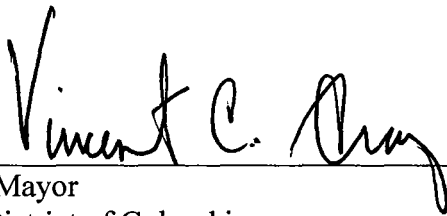
This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer

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than 90 days, as provided for emergency acts of the Council of the District of Columbia in section 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-204.12(a)).



Chairman
Council of the District of Columbia



Mayor
District of Columbia
APPROVED
March 14, 2014

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-298

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

MARCH 14, 2014

To amend, on an emergency basis, the Transportation Infrastructure Mitigation Temporary Amendment Act of 2013 and the Department of Transportation Establishment Act of 2002 to clarify the authority of the Director of the District Department of Transportation (“DDOT”) to enter into an agreement pursuant to 49 U.S.C. § 5310 and a payment agreement for services related to DDOT’s review of proposed and existing projects.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Transportation Infrastructure Mitigation Clarification Emergency Amendment Act of 2014”.

Sec. 2. Section 2(a) of the Transportation Infrastructure Mitigation Temporary Amendment Act of 2013, effective February 22, 2014 (D.C. Law 20-68; 60 DCR 19), is amended to read as follows:

“(a) Section 3(f) (D.C. Official Code § 50-921.02(f)) is amended to read as follows:

“(f) The Director may:

“(1) With respect to the program established pursuant to 49 U.S.C. § 5310 (the “5310 Program”):

“(A) Enter into agreements with nonprofit organizations to provide those nonprofit organizations vehicles to transport elderly residents and residents with disabilities;

“(B) Provide an application for the 5310 Program each year, solicit applicants to apply, and administer a selection process to identify which eligible applicants may participate;

“(C) Enter into agreements with the nonprofit organizations that are selected to receive vehicles to ensure they use the vehicles as prescribed by the 5310 Program guidelines and regulations enacted pursuant to this paragraph, including the requirement that the vehicle recipient deposit matching funds into the District Department of Transportation Enterprise Fund for Transportation Initiatives; and

“(D) Enter into contracts with third parties for the procurement and maintenance of eligible vehicles to be used by the nonprofit organizations selected by the Director;

“(2) Enter into an agreement with a developer, property owner, utility company, the federal government or other governmental entity, or other person or entity requiring payment

ENROLLED ORIGINAL

for the costs of DDOT's review of the proposed or existing project on private property or public space that may affect the transportation infrastructure or public space in the District or DDOT's ability to manage and maintain the transportation infrastructure or public space in the District and requiring the implementation of or payment for, per the agreement, transportation infrastructure or public improvements or mitigation measures to address the project's impact on the transportation infrastructure or public space in the District or on DDOT's ability to manage and maintain the transportation infrastructure or public space in the District; provided, that:

“(A) A payment, improvement, and mitigation measure required under an agreement authorized by this paragraph shall be reasonably related to:

“(i) The costs incurred by DDOT in reviewing the project;

“(ii) The effects of the project on the transportation infrastructure or public space in the District; and

“(iii) The effects of the project on DDOT's ability to manage and maintain the transportation infrastructure or public space in the District; and

“(B) A payment made pursuant to an agreement authorized by this paragraph shall be in addition to, and not in lieu of, a payment required for the temporary use of public space or the use of the public right of way pursuant to the District of Columbia Public Space Rental Act, approved October 17, 1968 (82 Stat. 1156; D.C. Official Code § 10-1101.01 *et seq.*), or Title VI of the Fiscal Year 1997 Budget Support Act of 1996, effective April 9, 1997 (D.C. Law 11-198; D.C. Official Code § 10-1141.01 *et seq.*); and

“(3) Promulgate, amend, or repeal rules to implement the provisions of this subsection, pursuant to the Mayor's authority under the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501, *et seq.*)”.

Sec. 3. Section 3(f) of the Department of Transportation Establishment Act of 2002, effective May 21, 2002 (D.C. Law 14-137; D.C. Official Code § 50-921.02(f)), is amended to read as follows:

“(f) The Director may:

“(1) With respect to the program established pursuant to 49 U.S.C. § 5310 (the “5310 Program”):

“(A) Enter into agreements with nonprofit organizations to provide those nonprofit organizations vehicles to transport elderly residents and residents with disabilities;

“(B) Provide an application for the 5310 Program each year, solicit applicants to apply, and administer a selection process to identify which eligible applicants may participate;

“(C) Enter into agreements with the nonprofit organizations that are selected to receive vehicles to ensure they use the vehicles as prescribed by the 5310 Program guidelines and regulations enacted pursuant to this paragraph, including the requirement that the vehicle recipient deposit matching funds into the District Department of Transportation Enterprise Fund for Transportation Initiatives; and

“(D) Enter into contracts with third parties for the procurement and maintenance of eligible vehicles to be used by the nonprofit organizations selected by the Director;

ENROLLED ORIGINAL

“(2) Enter into an agreement with a developer, property owner, utility company, the federal government or other governmental entity, or other person or entity requiring payment for the costs of DDOT’s review of the proposed or existing project on private property or public space that may affect the transportation infrastructure or public space in the District or DDOT’s ability to manage and maintain the transportation infrastructure or public space in the District and requiring the implementation of or payment for, per the agreement, transportation infrastructure or public improvements or mitigation measures to address the project’s impact on the transportation infrastructure or public space in the District or on DDOT’s ability to manage and maintain the transportation infrastructure or public space in the District; provided, that:

“(A) A payment, improvement, and mitigation measure required under an agreement authorized by this paragraph shall be reasonably related to:

“(i) The costs incurred by DDOT in reviewing the project;

“(ii) The effects of the project on the transportation infrastructure or public space in the District; and

“(iii) The effects of the project on DDOT’s ability to manage and maintain the transportation infrastructure or public space in the District; and

“(B) A payment made pursuant to an agreement authorized by this paragraph shall be in addition to, and not in lieu of, a payment required for the temporary use of public space or the use of the public right of way pursuant to the District of Columbia Public Space Rental Act, approved October 17, 1968 (82 Stat. 1156; D.C. Official Code § 10-1101.01 *et seq.*), or Title VI of the Fiscal Year 1997 Budget Support Act of 1996, effective April 9, 1997 (D.C. Law 11-198; D.C. Official Code § 10-1141.01 *et seq.*); and

“(3) Promulgate, amend, or repeal rules to implement the provisions of this subsection, pursuant to the Mayor’s authority under the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501, *et seq.*)”.

Sec. 4. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Budget Director 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.

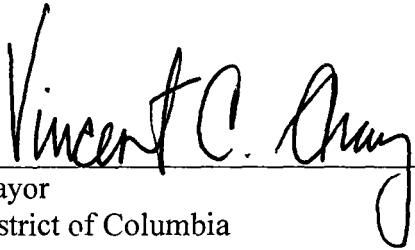
This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section

ENROLLED ORIGINAL

412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).



Chairman
Council of the District of Columbia



Mayor
District of Columbia

APPROVED
March 14, 2014

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-299

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

MARCH 14, 2014

To amend, on an emergency basis, the Recreation Act of 1994 to clarify that the Department of Parks and Recreation's implementation of its nutritional requirements is not contingent upon promulgation of unrelated regulations concerning field and facility permitting.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Department of Parks and Recreation Fee-based Use Permit Authority Clarification Emergency Amendment Act of 2014".

Sec. 2. Section 7a(b)(2) of the Recreation Act of 1994, effective September 14, 2011 (D.C. Law 19-21; D.C. Official Code § 10-307(b)(2)), is amended by striking the phrase "section 3(b-1) and (d), section 3a, and section 3b" and inserting the phrase "section 3(b-1) and (d) and section 3a" in its place.

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Budget Director 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. 4. Effective date.

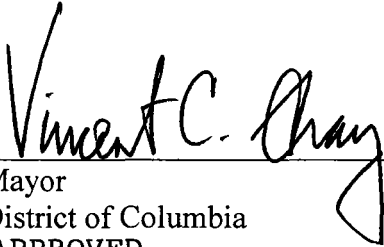
This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section

ENROLLED ORIGINAL

412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788;
D.C. Official Code § 1-204.12(a)).



Chairman
Council of the District of Columbia



Mayor
District of Columbia
APPROVED
March 14, 2014

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-300

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

MARCH 14, 2014

To amend, on a temporary basis, the Animal Control Act of 1979 to clarify that an educational institution is permitted to have animals for educational and instructional purposes.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Classroom Animal for Educational Purposes Clarification Temporary Amendment Act of 2014".

Sec. 2. Section 9(h) of the Animal Control Act of 1979, effective October 18, 1979 (D.C. Law 3-30; D.C. Official Code § 8-1808(h)), is amended by adding a new paragraph (6) to read as follows:

"(6) Paragraph (1) of this subsection shall not apply to educational institutions that possess animals for educational and instructional purposes and that otherwise comply with humane, sanitary, and safe treatment requirements, as set forth in section 502 of the Animal Protection Amendment Act of 2008, effective December 5, 2008 (D.C. Law 17-281; D.C. Official Code § 8-1851.02)."

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Budget Director 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. 4. Effective date.

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

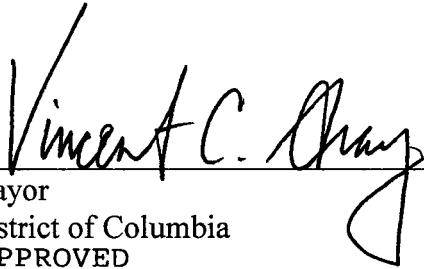
ENROLLED ORIGINAL

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

(b) This act shall expire after 225 days of its having taken effect.



Chairman
Council of the District of Columbia



Mayor
District of Columbia
APPROVED
March 14, 2014

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 it is introduced.

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.

=====

COUNCIL OF THE DISTRICT OF COLUMBIA

PROPOSED LEGISLATION

BILLS

B20-677 D.C. Urban Farming and Food Security Act of 2014

Intro. 02-04-14 by Councilmembers Grosso, Wells and Cheh and referred sequentially to the Committee on Finance and Revenue and the Committee of the Whole

B20-733 Tobacco Product Manufacturer Reserve Fund Amendment Act of 2014

Intro. 03-05-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee of the Whole

B20-734 Fair Leave Act of 2014

Intro. 03-14-14 by Councilmembers Grosso, Catania, Wells and McDuffie and referred to the Committee on Government Operations

PROPOSED RESOLUTIONS

PR20-691 Board of Veterinary Examiners Dr. Aruna Noon Kampani Confirmation Resolution of 2014

Intro. 03-06-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Health

PROPOSED RESOLUTIONS CON'T

PR20-692 Real Estate Commission Helen McMurdock Dodson Confirmation Resolution of 2014

Intro. 03-11-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business, Consumer, and Regulatory Affairs

PR20-693 Medicaid Updates to the Reimbursement Methodology for Intermediate Care Facilities for Individuals with Intellectual Disabilities State Plan Amendment Approval Resolution of 2014

Intro. 03-12-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Health with comments from the Committee on Human Services

PR20-694 District of Columbia Commission on Human Rights David Scruggs Confirmation Resolution of 2014

Intro. 03-13-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary and Public Safety

PR20-695 District of Columbia Commission on Human Rights Motoko Aizawa Confirmation Resolution of 2014

Intro. 03-13-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary and Public Safety

PR20-696 Commission on Asian and Pacific Islander Community Development Nicholas C. Lephram Confirmation Resolution of 2014

Intro. 03-13-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Government Operations

PR20-697 Commission on Asian and Pacific Islander Community Development Laura Shin Confirmation Resolution of 2014

Intro. 03-13-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Government Operations

PR20-698 Commission on Asian and Pacific Islander Community Development Ajay K. Ojha Confirmation Resolution of 2014

Intro. 03-13-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Government Operations

PROPOSED RESOLUTIONS CON'T

PR20-699 Commission on Asian and Pacific Islander Community Development Simone E. Jacobson Confirmation Resolution of 2014

Intro. 03-13-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Government Operations

PR20-700 Commission on Asian and Pacific Islander Community Development Dana Burgess Confirmation Resolution of 2014

Intro. 03-13-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Government Operations

PR20-701 Commission on Asian and Pacific Islander Community Development Sapna D. Pandya Confirmation Resolution of 2014

Intro. 03-13-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Government Operations

PR20-702 Rent Reasonableness Standard Approval Resolution of 2014

Intro. 03-14-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Human Services

PR20-703 FEMS Redistribution Resolution of 2014

Intro. 03-14-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary and Public Safety

COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE OF THE WHOLE
NOTICE OF PUBLIC HEARING
1350 Pennsylvania Avenue, NW, Washington, DC 20004

CHAIRMAN PHIL MENDELSON
COMMITTEE OF THE WHOLE
ANNOUNCES A PUBLIC HEARING

on

Bill 20-21, Council Contract Review Repeal Act of 2013;

Bill 20-75, District Contracting Price Reasonableness Assurance Amendment Act of 2013;

Bill 20-477, Criteria for Council Review of Contracts Subcontractor Requirement Amendment Act of 2013; and

Bill 20-649, Contractor Pay-to-Play Elimination Amendment Act of 2014

on

**Tuesday, April 15, 2014
1:30 p.m., Hearing Room 412, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004**

Council Chairman Phil Mendelson announces the scheduling of a public hearing of the Committee of the Whole on **Bill 20-21, Council Contract Review Repeal Act of 2013; Bill 20-75, District Contracting Price Reasonableness Assurance Amendment Act of 2013; Bill 20-477, Criteria for Council Review of Contracts Subcontractor Requirement Amendment Act of 2013; and Bill 20-649, Contractor Pay-to-Play Elimination Amendment Act of 2014.** The hearing will be held at 1:30 p.m. on Tuesday, April 15, 2014 in Hearing Room 412 of the John A. Wilson Building.

The stated purpose of **Bill 20-21** is to eliminate Council review of Mayoral contracts by repeal of section 451 of the Home Rule Act. The stated purpose of **Bill 20-75** is to amend the Procurement Practices Reform Act of 2011 to clarify the process for determining price reasonableness. The stated purpose of **Bill 20-477** is to require that proposed contracts submitted to the Council include summary information regarding any subcontractor contract. The stated purpose of **Bill 20-649** is to prohibit a person who makes a contribution to a covered recipient from entering into a contract or agreement with the District, receiving title or any other interest in a street or alley, receiving a grant or tax abatement, or entering into an agreement for the acquisition, sale, or lease of any land or building until one year after the general election for which the contribution was made. **Bill 20-649** also requires a person to provide a sworn statement to the District confirming their eligibility to enter into a contract or agreement with the District for any of the interests or benefits identified in the act.

Those who wish to testify should contact Evan Cash, Committee Director, at (202) 724-7002, or via e-mail at ecash@dccouncil.us, and provide their name, address, telephone number, organizational affiliation and title (if any) by close of business Friday, April 11, 2014. 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, April 11, 2014 the testimony will be distributed to Councilmembers before the hearing. Witnesses should limit their testimony to five minutes; less time will be allowed if there are a large number of witnesses. Copies of each of the Bills can be obtained through the Legislative Services Division of the Secretary of the Council's office or at <http://dcclims1.dccouncil.us/lims>.

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 of the Whole, Council of the District of Columbia, Suite 410 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at 5:00 p.m. on April 29, 2014.

**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 20-660, THE “CHIEF MEDICAL EXAMINER ROGER MITCHELL
CONFIRMATION RESOLUTION OF 2014”**

**Friday, May 9, 2014
1 p.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 Friday, May 9, 2014, beginning at 1 p.m. in Room 412 of the John A. Wilson Building.

The purpose of this hearing is to receive public comment on the Mayor’s nomination of Roger Mitchell to serve as the Chief Medical Examiner of the Office of the Chief Medical Examiner.

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 Wednesday, May 7, 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 Monday, May 19, 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 the Judiciary and Public Safety
Notice of Public Roundtable**

1350 Pennsylvania Avenue, NW, Washington, D.C. 20004

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

ANNOUNCES A PUBLIC ROUNDTABLE ON

PR 20-703, THE "FEMS REDISTRIBUTION RESOLUTION OF 2014"

Friday, April 11, 2014

1 PM

Room 500, 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 roundtable on Proposed Resolution 20-703, the "FEMS Redistribution Resolution of 2014". The hearing will be held on Friday, April 11, 2014, beginning at 1 p.m. in Room 123 of the John A. Wilson Building, 1350 Pennsylvania Avenue, NW, Washington, DC 20004.

The purpose of this roundtable is to receive public comment on the Mayor's proposal to amend the current Fire and Emergency Medical Services (FEMS) Ambulance deployment plan to allow for redistribution of equipment and personnel in order to improve capacity for responding to emergency medical service calls. PR 20-703 is available online at <http://dcclims1.dccouncil.us/images/00001/20140320162229.pdf>.

The Committee invites the public to testify. Individuals and representatives of organizations 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 Wednesday, April 9, 2014. Witnesses should bring 15 copies of their testimony. Testimony may be limited to 3 minutes for individuals and 5 minutes for those representing organizations or groups.

If you are unable to testify at the public roundtable, written statements are encouraged and will be made part of the official record. Written statements should be submitted by 5 pm Monday, April 21, 2014 to Ms. Shuford, Committee on the Judiciary and Public Safety, Room 109, 1350 Pennsylvania Ave., NW, Washington, DC, 20004, or via email at tshuford@dccouncil.us.

COUNCIL OF THE DISTRICT OF COLUMBIA
Notice of Reprogramming Request

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. 20-166: Request to reprogram \$800,000 of Fiscal Year 2014 Local funds budget authority from the Emergency and Contingency Reserve Funds (ECRF) to the Children and Youth Investment Collaborative (CYIC) was filed in the Office of the Secretary on March 20, 2014. This reprogramming is needed to provide funding to organizations seeking small grants to deliver programs.

RECEIVED: 14 day review begins March 21, 2014

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: March 28, 2014
Petition Date: May 12, 2014
Hearing Date: May 27, 2014
Protest Hearing Date: July 16, 2014

License No.: ABRA-094712
Licensee: Ima Pizza Store 9, LLC
Trade Name: & Pizza
License Class: Retailer’s Class “C” Restaurant
Address: 1005 E Street NW
Contact: Paul L. Pascal 202-544-2200

WARD 2

ANC 2C

SMD 2C01

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 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 July 16, 2104 at 1:30 pm.

NATURE OF OPERATION

This is new Retail Class “C” Restaurant that will prepare and sell pizza and prepared pizzeria food products. They will have recorded music. There are 20 seats, total occupancy 48.

HOURS OF OPERATION/HOURS OF ALCOHOLIC BEVERAGE SALES

Sunday through Thursday 7 am – 2 am, Friday and Saturday 7 am – 3 am

HOURS OF LIVE ENTERTAINMENT OCCURING OR CONTINUING AFTER 6 PM

Sunday through Thursday 8 am – 2 am, Friday and Saturday 8 am – 3am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF PUBLIC HEARINGS
CALENDAR

WEDNESDAY, APRIL 2, 2014
2000 14TH STREET, N.W., SUITE 400S
WASHINGTON, D.C. 20009

Ruthanne Miller, Chairperson
Members: Nick Alberti, Donald Brooks, Herman Jones
Mike Silverstein, Hector Rodriguez, James Short

Protest Hearing (Status) **9:30 AM**
Case # **14-PRO-00016**; Good Essential-U Street, LLC, t/a TICO, 1926 14th
Street NW, License #93610, Retailer CR, ANC 2B
New Application

Protest Hearing (Status) **9:30 AM**
Case # **13-PRO-00180**; Chloe, LLC, t/a District, 2473 18th Street NW, License
#92742, Retailer CR, ANC 1C
Renewal Application

Fact Finding Hearing **9:30 AM**
Pub Crawl, Applicant: Michael Bramson & Alex Lopez, Date of Event: April
12, 2014, Event: Where's Waldo Bar Crawl, Neighborhood: Multiple Licensed
Premises, Size of Event: 2800-3500
*The names of the establishments participating in the Pub Crawl are available
upon request.*

Fact Finding Hearing **9:30 AM**
Pub Crawl, Applicant: Kevin Kirk, Date of Event: April 19, 2014, Event: Snow
Day Bar Crawl, Neighborhood: Multiple Licensed Premises, Size of Event:
1500-3000
*The names of the establishments participating in the Pub Crawl are available
upon request.*

Fact Finding Hearing **9:30 AM**
Case # **14-251-00044**; Backdoor, Inc., t/a Bachelors Mill/Backdoor Pub, 1104
8th Street SE, License #11277, Retailer CT, ANC 6B
Assault Inside of the Establishment

Show Cause Hearing **10:00 AM**
Case # 13-CMP-00343; Massachusetts Mutual Life Insurance Co., t/a Crowne Plaza, 1001 14th Street NW, License #25161, Retailer CH, ANC 2F
No ABC Manage on Duty, Failed to Post ABC Window Lettering

Show Cause Hearing **11:00 AM**
Case # 13-CMP-00161; Woodward Bros, Inc. t/a The Rhino-Bar And Pumphouse, 3295 M Street NW, License #523, Retailer CT, ANC 2E
Sale to Minor, Failed to Take Steps Necessary to Ascertain Legal Drinking Age

BOARD RECESS AT 12:00 PM
ADMINISTRATIVE AGENDA
1:00 PM

Protest Hearing **1:30 PM**
Case # 13-PRO-00124; Notta Tav Urne, LLC, t/a Pi Restaurant, 2309 18th Street NW, License #76754, Retailer CR, ANC 1C
Renewal Application

Protest Hearing **1:30 PM**
Case # 13-PRO-00152; Soloman Enterprises, LLC, t/a Climax Restaurant and Hookah Bar, 900 Florida Ave NW, License #88290, Retailer CT, ANC 1B
Renewal Application

Protest Hearing **4:30 PM**
Case # 13-PRO-00154; Mimi & D, LLC, t/a Vita Restaurant and, Lounge/Penthouse Nine, 1318 9th Street NW, License #86037, Retailer CT ANC 2F, **Renewal Application**

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: March 28, 2014
Petition Date: May 12, 2014
Hearing Date: May 27, 2014

License No.: ABRA-086319
Licensee: Cities, LLC
Trade Name: Cities
License Class: Retailer’s Class “C” Restaurant
Address: 919 19th Street, NW

Contact: Michael Kosmides 202-331-3232

WARD 2

ANC 2B

SMD 2B06

Notice is hereby given that this applicant has applied for a substantial change to its 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 Roll Call Hearing Date at 10:00 am, 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petitions and/or requests to appear before the Board must be filed on or before the Petition Date.

NATURE OF SUBSTANTIAL CHANGE

Request is for Change of Hours for the Sidewalk Café Endorsement. The Sidewalk Cafe capacity is 64.

CURRENT HOURS OF OPERATION/SALES/SERVICE/CONSUMPTION

Sunday through Thursday 8 am – 2 am Friday and Saturday 8 am -3 am

CURRENT HOURS OF OPERATION/SALES/SERVICE/CONSUMPTION/SIDEWALK CAFE

Sunday and Saturday 12 pm -1:30 am Monday- Friday 11:30 am - 2 am

PROPOSED HOURS OF OPERATION/SALES/SERVICE/CONSUMPTION/ SIDEWALK CAFE

Sunday 12 pm -2 am Monday through Thursday 11:30 am - 2 am Friday through Saturday 11:30 am - 3 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION**NOTICE OF PUBLIC HEARING**

Posting Date: March 28, 2014
Petition Date: May 12, 2014
Hearing Date: May 27, 2014
Protest Hearing Date: July 16, 2014

License No.: ABRA-090630
Licensee: Poyloun Group DC, LLC
Trade Name: Kruba
License Class: Retailer's "C" Restaurant
Address: 301 Tingey Street, SE
Contact Information: Chuchart Kanpirapang (703)597-9445

WARD 6

ANC 6D

SMD 6D07

Notice is hereby given that this licensee has applied for a substantial change to the 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, 2000 14th Street, NW, 4th Floor, Washington, D.C. 20009. Petitions and/or requests to appear before the Board must be filed on or before the Petition Date.

Licensee requests the following substantial changes to its nature of operation:

- To add a Sidewalk Cafe

**CURRENT HOURS OF ALCOHOLIC BEVERAGE OPERATIONS,
SALES, AND CONSUMPTION**

Sunday through Thursday 11 am to 1am; Friday and Saturday 11 am-3 am

**PROPOSED HOURS OF ALCOHOLIC BEVERAGE OPERATIONS,
SALES, AND CONSUMPTION FOR SIDEWALK CAFÉ (80) SEATS**

Sunday through Thursday 11 am to 10 pm; Friday and Saturday, 11 am-11 pm

***RESCIND**

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: March 14, 2014
 Petition Date: April 28, 2014
 Hearing Date: May 12, 2014
 Protest Hearing Date: July 02, 2014

License No.: ABRA-094313
 Licensee: 4724 CI, LLC
 Trade Name: Las Placitas Café
 License Class: Retailer’s Class “C” Restaurant
 Address: 4724 14th Street NW
 Contact: Isidoro Amaya 202-957-3652

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 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 June 11, 2014 at 1:30 pm.

NATURE OF OPERATION

This is new Retail Class “C” Restaurant. The restaurant will serve Latin American food. The type of entertainment shall be karaoke and occasional bands. The dance floor will be in the back space, which is 150 square feet in total. Total Capacity 75 including 20 seats for the rooftop patio

HOURS OF OPERATION/HOURS OF ALCOHOLIC BEVERAGE SALES

Sunday through Thursday 10 am – 2 am Friday and Saturday 10 am – 3 am

HOURS OF LIVE ENTERTAINMENT OCCURRING OR CONTINUING AFTER 6 PM

Sunday through Thursday 6 pm – 2 am Friday and Saturday 6 pm – 3 am

READVERTISEMENT*ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION****NOTICE OF PUBLIC HEARING**

Posting Date: March 28, 2014
Petition Date: May 12, 2014
Hearing Date: May 27, 2014
Protest Hearing Date: July 16, 2014

License No.: ABRA-094313
Licensee: Las Placitas Café, LLC
Trade Name: Las Placitas Restaurant
License Class: Retailer's Class "C" Restaurant
Address: 4724 14th Street NW
Contact: Isidoro Amaya 202-957-3652

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 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 July 16, 2014 at 1:30 pm.

NATURE OF OPERATION

This is new Retail Class "C" Restaurant. The restaurant will serve Latin American food. The type of entertainment shall be karaoke and occasional bands. The dance floor will be in the back space, which is 150 square feet in total. Total Capacity 95

HOURS OF OPERATION/HOURS OF ALCOHOLIC BEVERAGE SALES

Sunday through Thursday 10 am – 2 am Friday and Saturday 10 am – 3 am

HOURS OF LIVE ENTERTAINMENT OCCURING OR CONTINUING AFTER 6 PM

Sunday through Thursday 6 pm – 2 am Friday and Saturday 6 pm – 3 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION**NOTICE OF PUBLIC HEARING**

Posting Date: March 28, 2014
Petition Date: May 12, 2014
Hearing Date: May 27, 2014
Protest Date: July 16, 2014

License No.: ABRA-094510
Licensee: Lost and Found, LLC
Trade Name: Lost and Found
License Class: Retail Class "C" Tavern
Address: 1240 9th Street, N.W.
Contact: Brian Lenard, (301)467-4284

WARD 2 ANC 2F SMD 2F06

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 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 July 16, 2014.

NATURE OF OPERATION

New Tavern with heavy snacks and recorded music. Occupancy load is 99.

HOURS OF OPERATION

Sunday 10 am – 2 am, Monday through Thursday 8 am – 2 am, Friday and Saturday, 8 am – 3 am

HOURS OF SALES/SERVICE/CONSUMPTION

Sunday 10 am – 2 am, Monday through Thursday 8 am – 2 am, Friday and Saturday 8 am – 3 am

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
NOTICE OF PUBLIC HEARING**

Posting Date: March 28, 2014
Petition Date: May 12, 2014
Hearing Date: May 27, 2014

License No. ABRA-076011
Licensee: Salma, LLC
Trade Name: Red Lounge
License Class: Retailer's Class "C" Restaurant
Address: 2013 14th Street NW

WARD: 1

ANC: 1B

SMD: 1B12

The Alcoholic Beverage Regulation Administration (ABRA) provides notice that the licensee has filed a petition to amend or terminate the settlement agreement or settlement agreements attached to its license.

The current parties to the agreement(s) are: ANC 1B and Salma, LLC

The petition may be obtained by contacting ABRA's Public Information Office at 202-442-4423.

Any objectors are entitled to be heard before the granting of such a request on the Hearing Date at 1:30 pm, 2000 14th Street, N.W., 400 South, Washington, D.C., 20009. Petitions or requests to appear before the Board must be filed on or before the Petition Date.

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF PUBLIC HEARING

Wednesday, May 7, 2014

10:00 a.m. – 12:00 p.m.

2000 14th Street N.W.
The Reeves Building
Board Hearing Room, 4th Floor
Washington, D.C. 20009

The Alcoholic Beverage Control Board (Board) will conduct a hearing to receive public comment on two proposals regarding the renewal of the Adams Morgan Moratorium Zone. One proposal, submitted by Advisory Neighborhood Commission (ANC) 1C proposes to renew the existing Adams Morgan Moratorium Zone for a five year period with certain modifications. A second proposal submitted by the Kalorama Citizens Association seeks to have the existing Moratorium Zone renewed with no changes to current restrictions. The Board believes both of these proposals merit further evaluation, and thus adopted emergency rules on March 12, 2014, to extend the existing Moratorium for another 120 days to receive public comment.

The public comment hearing will be held on Wednesday, May 7, 2014 at 10:00 a.m. at 2000 14th Street, N.W., Board Hearing Room, Suite 400, Washington, D.C. 20009. Individuals and representatives of organizations who wish to testify should contact Martha Jenkins, General Counsel, at (202) 442-4456, or by e-mail at martha.jenkins@dc.gov by May 1, 2014.

E-mail contacts should include the full name, title, and affiliation, if applicable, of the person(s) testifying. Testimony may be limited to five (5) minutes in order to permit everybody an opportunity to be heard. Witnesses should bring nine (9) copies of their written testimony to the hearing.

If you are unable to testify and wish to comment, written statements are encouraged and will be made a part of the Board's official record. Copies of written statements should be submitted to Ruthanne Miller, Chairperson, Alcoholic Beverage Control Board, at 2000 14th Street, NW, Suite 400, Washington, D.C. 20009, no later than 4:00 p.m., Friday, May 9, 2014.

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: March 28, 2014
Petition Date: May 12, 2014
Hearing Date: May 27, 2014
Protest Date: July 16, 2014

License No.: ABRA-094610
Licensee: Washington DC Asian Food Corporation
Trade Name: Sushi Keiko
License Class: Retailer’s Class “C” Restaurant
Address: 2309 Wisconsin Ave., NW
Contact: Jeffrey Jackson 202-251-1566

WARD 3

ANC 3B

SMD 3B02

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 July 16, 2014.

NATURE OF OPERATION

Asian Restaurant with 100 seats and total occupancy load of 100.

HOURS OF OPERATION AND ALCOHOLIC BEVERAGES SALES/SERVICE/CONSUMPTION

Sunday through Thursday 8 am – 2 am and Friday & Saturday 8 am – 3 am

DEPARTMENT OF HEALTH
STATE HEALTH PLANNING AND DEVELOPMENT AGENCY
NOTICE OF INFORMATION HEARING

Pursuant to D.C. Official Code § 44-406(b)(4), the District of Columbia State Health Planning and Development Agency ("SHPDA") will hold an information hearing on the application by Palisades Healthcare Partners, Inc. for the acquisition of ASAP Services Corporation - Certificate of Need Registration No. 14-2-6. The hearing will be held on Tuesday, April 15, 2014, at 11:00 a.m., at 899 North Capitol Street, N.E., 2nd Floor, Room 216, Washington, D.C. 20002.

The hearing shall include a presentation by the Proposed Owner, describing its plans and addressing the certifications provided pursuant to D.C. Official Code § 44-406(b)(1) and an opportunity for affected persons to testify. Persons who wish to testify should contact the SHPDA on (202) 442-5875 before 4:45 p.m., by Monday, April 14, 2014. Each member of the public who wishes to testify will be allowed a maximum of five (5) minutes. Written statements may be submitted to:

The State Health Planning and Development Agency
899 North Capitol Street, N.E.
Second Floor
Washington, D.C. 20002

Written statements must be received before the record closes at 4:45 p.m. on Tuesday, April 22, 2014. Persons who would like to review the Certificate of Need application or who have questions relative to the hearing may contact the SHPDA on (202) 442-5875.

**BOARD OF ZONING ADJUSTMENT
PUBLIC HEARING NOTICE**

TUESDAY, MAY 20, 2014

441 4TH STREET, N.W.

**JERRILY R. KRESS MEMORIAL HEARING ROOM, SUITE 220-SOUTH
WASHINGTON, D.C. 20001**

TO CONSIDER THE FOLLOWING: The Board of Zoning Adjustment will adhere to the following schedule, but reserves the right to hear items on the agenda out of turn.

9:30 A.M. HEARING SESSION

A.M.

WARD SIX

18756 **Application of Robert D. and Siska Shaw**, pursuant to 11 DCMR §
ANC-6B 3104.1, for a special exception for an addition to an existing semi-
detached dwelling under section 223, not meeting the lot area (section
401), lot occupancy (section 403) and side yard (section 405) and
nonconforming structure (subsection 2001.3), in the R-4 District at
premises 630 A Street, S.E. (Square 869, Lot 57).

WARD SIX

18758 **Application of James Mahoney**, pursuant to 11 DCMR § 3104.1, for a
ANC-6B special exception for a third floor addition to an existing one-family row
dwelling under section 223, not meeting the lot area/width requirements
under section 401, the lot occupancy requirements under section 403, and
the nonconforming structure requirements under subsection 2001.3, in the
R-4 District at premises 1402 E Street, S.E. (Square 1042E, Lot 43).

WARD SIX

18757 **Application of Tahmina Proulx**, pursuant to 11 DCMR § 3104.1, for a
ANC-6B special exception for a fast food (pizza) establishment under section 733,
in the C-2-A District at premises 1400 Pennsylvania Avenue, S.E. (Square
1065NE, Lot 19).

WARD FIVE

18759 **Application of I.S. Enterprises Inc.**, pursuant to 11 DCMR § 3103.2, for
ANC-5B variances from the lot area requirements under subsections 401.3 and
401.11, to convert an existing one-family dwelling into a new eight (8)
unit apartment building in the R-4 District at premises 1328 Montello
Avenue, N.E. (Square 4064, Lots 32, 33 and 34).

BZA PUBLIC HEARING NOTICE

MAY 20, 2014

PAGE NO. 2

WARD SIX

18760 **Application of Channel Square Housing LLC**, pursuant to 11 DCMR §
ANC-6D 3103.2, for a variance from use provisions to allow nonprofit office use
under subsection 320.3, in the R-3 District at premises (portion of the first
floor)(1412 4th Street, S.W. (Square 547, Lot 24).

WARD ONE

**THIS APPLICATION WAS POSTPONED FROM THE MARCH 11, 2014,
PUBLIC HEARING SESSION:**

18723 **Application of 2101 Morning Bright LLC**, pursuant to 11 DCMR §
ANC-1B 3103.2, for variances from the lot occupancy (section 772) rear yard
(section 774) and off-street parking location (2116.12) requirements to
allow the construction of a mixed-use residential building with ground
floor retail in the Arts/C-2-B District at 2105 10th Street, N.W. (Square
358, Lots 5,6 and 802).

PLEASE NOTE:

Failure of an applicant or appellant to appear at the public hearing will subject the application or appeal to dismissal at the discretion of the Board.

Failure of an applicant or appellant to be adequately prepared to present the application or appeal to the Board, and address the required standards of proof for the application or appeal, may subject the application or appeal to postponement, dismissal or denial. The public hearing in these cases will be conducted in accordance with the provisions of Chapter 31 of the District of Columbia Municipal Regulations, Title 11, and Zoning. Pursuant to Subsection 3117.4, of the Regulations, the Board will impose time limits on the testimony of all individuals. Individuals and organizations interested in any application may testify at the public hearing or submit written comments to the Board.

Except for the affected ANC, any person who desires to participate as a party in this case must clearly demonstrate that the person's interests would likely be more significantly, distinctly, or uniquely affected by the proposed zoning action than other persons in the general public. **Persons seeking party status shall file with the Board, not less than 14 days prior to the date set for the hearing, a Form 140 – Party Status Application Form.** This form may be obtained from the Office of Zoning at the address stated below or downloaded from the Office of Zoning's website at: www.dcoz.dc.gov. All requests and comments should be submitted to the Board through the Director, Office of Zoning, 441 4th Street, NW, Suite 210, Washington, D.C. 20001. Please include the case number on all correspondence.

BZA PUBLIC HEARING NOTICE

MAY 20, 2014

PAGE NO. 3

FOR FURTHER INFORMATION, CONTACT THE OFFICE OF ZONING AT (202) 727-6311.

**LLOYD J. JORDAN, CHAIRMAN, S. KATHRYN ALLEN, VICE
CHAIRPERSON, MARNIQUE Y. HEATH, 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 PUBLIC HEARING**

TIME AND PLACE: **Monday, May 19, 2014, @ 6:30 p.m.**
Jerrily R. Kress Memorial Hearing Room
441 4th Street, N.W., Suite 220-South
Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

CASE NO. 13-13 (Oxbridge Development on 9th Street, LLC – Map Amendment @ Square 3831)

THIS CASE IS OF INTEREST TO ANC 5B and ANC 5E

On November 19, 2013 the Office of Zoning received an application from Oxbridge Development on 9th Street, LLC (the “Applicant”). The Applicant is requesting approval of an amendment to the Zoning Map to rezone property located in Square 3831 from the C-M-1 Zone District to the R-4 Zone District.

The R-4 Zone District is designed to include those areas now developed primarily with row dwellings, but within which there have been a substantial number of conversions of the dwellings into dwellings for two or more families.

The C-M Zone District is intended to provide sites for heavy commercial and light manufacturing activities employing large numbers of people and requiring some heavy machinery under controls that minimize any adverse effect on other nearby, more restrictive districts. Heavy truck traffic and loading and unloading operations are expected to be characteristic of the C-M Zone District.

The Office of Planning provided its report on January 17, 2014 and the case was set down for hearing on January 27, 2014. The Applicant provided its prehearing statement on March 4, 2014.

The property that is the subject of this application consists of approximately 12,402 square feet of land area and is located at the northwest corner of 9th Street and Kearny Street N.E. (Square 3831, Lots 830 and 42-45).

Proposed amendments to the Zoning Regulations and Map of the District of Columbia are authorized pursuant to the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797; DC Official Code Section 6-641.01 et. seq.)

This public hearing will be conducted in accordance with the contested case provisions of the Zoning Regulations, 11 DCMR § 3022.

Z.C. NOTICE OF PUBLIC HEARING
Z.C. CASE NO. 13-13
PAGE 2

How to participate as a witness.

Interested persons or representatives of organizations may be heard at the public hearing. The Commission also requests that all witnesses prepare their testimony in writing, submit the written testimony prior to giving statements, and limit oral presentations to summaries of the most important points. The applicable time limits for oral testimony are described below. Written statements, in lieu of personal appearances or oral presentation, may be submitted for inclusion in the record.

How to participate as a party.

Any person who desires to participate as a party in this case must so request and must comply with the provisions of 11 DCMR § 3022.3.

A party has the right to cross-examine witnesses, to submit proposed findings of fact and conclusions of law, to receive a copy of the written decision of the Zoning Commission, and to exercise the other rights of parties as specified in the Zoning Regulations. If you are still unsure of what it means to participate as a party and would like more information on this, please contact the Office of Zoning at dcoz@dc.gov or at (202) 727-6311.

Except for the affected ANC, any person who desires to participate as a party in this case must clearly demonstrate that the person's interests would likely be more significantly, distinctly, or uniquely affected by the proposed zoning action than other persons in the general public. Persons seeking party status **shall file with the Commission, not less than 14 days prior to the date set for the hearing, a Form 140 – Party Status Application, a copy of which may be downloaded from the Office of Zoning's website at: <http://dcoz.dc.gov/services/app.shtm>.** This form may also be obtained from the Office of Zoning at the address stated below.

If an affected Advisory Neighborhood Commission (ANC), pursuant to 11 DCMR 3012.5, intends to participate at the hearing, the ANC shall also submit the information cited in § 3012.5 (a) through (i). The written report of the ANC shall be filed no later than seven (7) days before the date of the hearing.

All individuals, organizations, or associations wishing to testify in this case are encouraged to inform the Office of Zoning their intent to testify prior to the hearing date. This can be done by mail sent to the address stated below, e-mail (donna.hanousek@dc.gov), or by calling (202) 727-0789.

The following maximum time limits for oral testimony shall be adhered to and no time may be ceded:

- | | | |
|----|----------------------------------|-------------------------|
| 1. | Applicant and parties in support | 60 minutes collectively |
| 2. | Parties in opposition | 60 minutes collectively |

Z.C. NOTICE OF PUBLIC HEARING
Z.C. CASE NO. 13-13
PAGE 3

- 3. Organizations 5 minutes each
- 4. Individuals 3 minutes each

Pursuant to § 3020.3, the Commission may increase or decrease the time allowed above, in which case, the presiding officer shall ensure reasonable balance in the allocation of time between proponents and opponents.

Written statements, in lieu of oral testimony, may be submitted for inclusion in the record. The public is encouraged to submit written testimony through the Interactive Zoning Information System (IZIS) at <http://app.dcoz.dc.gov/Login.aspx>; however, written statements may also be submitted by mail to 441 4th Street, N.W., Suite 200-S, Washington, DC 20001; by e-mail to zcsubmissions@dc.gov; or by fax to (202) 727-6072. Please include the case number on your submission. **FOR FURTHER INFORMATION, YOU MAY CONTACT THE OFFICE OF ZONING AT (202) 727-6311.**

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.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PUBLIC HEARING**

TIME AND PLACE: **Thursday, May 22, 2014, @ 6:30 p.m.**
Jerrily R. Kress Memorial Hearing Room
441 4th Street, N.W., Suite 220-South
Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

CASE NO. 13-17 (Brownstein Commons, LP – Consolidated PUD & Related Map Amendment @ Square 5933, Lots 46-49 and Square 5934, Lots 17, 18, & 806)

THIS CASE IS OF INTEREST TO ANC 8C and ANC 8E

On December 13, 2013, the Office of Zoning received an application from Brownstein Commons, LP (the “Applicant”). The Applicant is requesting approval of a planned unit development (PUD) and a related Zoning Map Amendment application. The Office of Planning provided its report on January 31, 2014, and the case was set down for hearing on February 10, 2014. The Applicant provided its prehearing statement on March 5, 2014.

The property that is the subject of this application consists of approximately 7.46 acres of land area and consists of two parcels (Square 5933, Lots 46, 47, 48 and 49; and Square 5934, Lots 17, 18, and 806). The larger parcel is bound by Mississippi Avenue, S.E. to the south, 13th Street, S.E. to the east, Trenton Place, S.E. and 11th Place, S.E. to the north and 10th Place, S.E. to the west. The smaller parcel is located immediately to the west of the larger parcel across 10th Place, S.E. The smaller parcel is bound by Mississippi Avenue, S.E. to the south, 10th Place, S.E. to the east, the M.C. Terrell/McGogney Elementary School to the west, and the Eagle Academy Charter School to the north. The property is zoned R-5-A and the Applicant is seeking to rezone the property to the R-5-B Zone District.

The Applicant proposes the development of a PUD project that includes a residential community of for-sale townhouses and rental apartments. The PUD project will consist of approximately 190 residential units included in two multi-family buildings located along Mississippi Avenue, S.E. which will be connected by a one-story amenity building. The multi-family residential units will vary in size from efficiencies - two bedrooms. Ten of the residential units in the multi-family buildings will be reserved as permanent supportive housing units which will be provided supportive services from Community of Hope. The proposed multi-family residential buildings will be approximately 55 feet in height and will include approximately 230,000 square feet of gross floor area. Vehicular access to these buildings will occur from 10th Place, SE and from 13th Street, S.E.

The 74 townhouses included in this project will have frontage along 10th Place, S.E., 11th Place, S.E., Trenton Place, S.E. and Mississippi Avenue, S.E. The townhouses will be 16 foot wide with 3 bedrooms, and will be approximately 40 feet tall (with flexibility as needed to accommodate some minor variation in the measured building heights depending on the grade

**Z.C. NOTICE OF PUBLIC HEARING
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PAGE 2**

changes throughout the site). Vehicular access to the townhouses that have frontage along Trenton Place, S.E. 11th Place, S.E. and some townhouses on 10th Place, S.E. will occur via a private alley that has access from 13th Street, S.E. and from the public alley located between 10th Place, S.E. and 11th Place, S.E. The townhomes with frontage along the eastern side of 10th Place, S.E. will have access to parking spaces from a new curb cut on 10th Place, S.E. The townhomes located along Mississippi Avenue, S.E. and the western side of 10th Place, S.E. will have vehicular access from a private alley located off of 10th Place, S.E.

The multifamily rental building will reserve 5% of the units for households earning up to 50% of the area median income (“AMI”) and the remaining units will be reserved for households earning up to 60% of AMI. Ten percent of the for-sale townhomes will be set aside as the required Inclusionary Zoning units, half of these townhomes will be reserved for households earning up to 50% of AMI and the other half for households earning up to 80% of AMI. The Floor Area Ratio (“FAR”) for the entire PUD project will be approximately 1.31 and will have an overall lot occupancy of approximately 48%. The PUD will include 202 parking spaces.

The R-5-B Zone District permits a maximum density of 1.8 FAR as a matter-of-right and 3.0 in a PUD project. The maximum height allowed as a matter-of-right in the R-5-A Zone District is 50 feet. A PUD project in the R-5-B Zone District permits a maximum height of 60 feet.

This public hearing will be conducted in accordance with the contested case provisions of the Zoning Regulations, 11 DCMR § 3022.

How to participate as a witness.

Interested persons or representatives of organizations may be heard at the public hearing. The Commission also requests that all witnesses prepare their testimony in writing, submit the written testimony prior to giving statements, and limit oral presentations to summaries of the most important points. The applicable time limits for oral testimony are described below. Written statements, in lieu of personal appearances or oral presentation, may be submitted for inclusion in the record.

How to participate as a party.

Any person who desires to participate as a party in this case must so request and must comply with the provisions of 11 DCMR § 3022.3.

A party has the right to cross-examine witnesses, to submit proposed findings of fact and conclusions of law, to receive a copy of the written decision of the Zoning Commission, and to exercise the other rights of parties as specified in the Zoning Regulations. If you are still unsure of what it means to participate as a party and would like more information on this, please contact the Office of Zoning at dcoz@dc.gov or at (202) 727-6311.

Z.C. NOTICE OF PUBLIC HEARING
Z.C. CASE NO. 13-17
PAGE 3

Except for the affected ANC, any person who desires to participate as a party in this case must clearly demonstrate that the person’s interests would likely be more significantly, distinctly, or uniquely affected by the proposed zoning action than other persons in the general public. Persons seeking party status **shall file with the Commission, not less than 14 days prior to the date set for the hearing, a Form 140 – Party Status Application, a copy of which may be downloaded from the Office of Zoning’s website at: <http://dcoz.dc.gov/services/app.shtm>.** This form may also be obtained from the Office of Zoning at the address stated below.

If an affected Advisory Neighborhood Commission (ANC), pursuant to 11 DCMR 3012.5, intends to participate at the hearing, the ANC shall also submit the information cited in § 3012.5 (a) through (i). The written report of the ANC shall be filed no later than seven (7) days before the date of the hearing.

All individuals, organizations, or associations wishing to testify in this case are encouraged to inform the Office of Zoning their intent to testify prior to the hearing date. This can be done by mail sent to the address stated below, e-mail (donna.hanousek@dc.gov), or by calling (202) 727-0789.

The following maximum time limits for oral testimony shall be adhered to and no time may be ceded:

- | | | |
|----|----------------------------------|-------------------------|
| 1. | Applicant and parties in support | 60 minutes collectively |
| 2. | Parties in opposition | 60 minutes collectively |
| 3. | Organizations | 5 minutes each |
| 4. | Individuals | 3 minutes each |

Pursuant to § 3020.3, the Commission may increase or decrease the time allowed above, in which case, the presiding officer shall ensure reasonable balance in the allocation of time between proponents and opponents.

Written statements, in lieu of oral testimony, may be submitted for inclusion in the record. The public is encouraged to submit written testimony through the Interactive Zoning Information System (IZIS) at <http://app.dcoz.dc.gov/Login.aspx>; however, written statements may also be submitted by mail to 441 4th Street, N.W., Suite 200-S, Washington, DC 20001; by e-mail to zcsubmissions@dc.gov; or by fax to (202) 727-6072. Please include the case number on your submission. **FOR FURTHER INFORMATION, YOU MAY CONTACT THE OFFICE OF ZONING AT (202) 727-6311.**

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.

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 774; D.C. Official Code § 1-307.02 (2012 Repl. & 2013 Supp.)) and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)), hereby gives notice of repeal of Section 936, entitled “Dental Services”, and adoption of a new Section 1921, entitled “Dental Services”, of Chapter 19 (Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

These final rules establish standards governing reimbursement of dental services provided to participants in the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (ID/DD Waiver) and conditions of participation for providers.

The ID/DD Waiver was approved by the Council of the District of Columbia and renewed by the U.S. Department of Health and Human Services’, Centers for Medicare and Medicaid Services, for a five-year period beginning November 20, 2012. These rules amend the previously published final rules by: (1) establishing that providers of dental services shall provide services consistent with the standards established by the American Dental Association; and (2) amending the definitions section to clarify words and/or phrases to simplify interpretation of the rule.

A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on November 8, 2013 at 60 DCR 15570, and a Notice of Second Emergency and Proposed Rulemaking was published February 14th, 2014 at 61 DCR 001327. No comments were received and no changes have been made. The Director adopted these rules as final on March 21, 2014 and they shall become effective on the date of publication in the *D.C. Register*.

Section 936 (DENTAL SERVICES) of Chapter 9 (MEDICAID PROGRAM), Title 29 (PUBLIC WELFARE) of the DCMR is repealed.

A new Section 1921 (DENTAL SERVICES) of Chapter 19 (HOME AND COMMUNITY-BASED SERVICES WAIVER FOR INDIVIDUALS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES), Title 29 (PUBLIC WELFARE) is added to read as follows:

1921 DENTAL SERVICES

1921.1 The purpose of this section is to establish standards governing Medicaid eligibility for dental services under the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (Waiver) and to establish conditions of participation for providers of dental services.

- 1921.2 To be eligible for Medicaid reimbursement, each person shall have a documented need for the service as identified in the Individual Support Plan (ISP) and Plan of Care.
- 1921.3 Medicaid reimbursable dental services under this Waiver are identical to dental services offered under the District of Columbia's Medicaid State Plan and shall be provided in accordance with the applicable requirements set forth in Section 964 (Dental Services) of Chapter 9 of Title 29 DCMR.
- 1921.4 Medicaid reimbursable dental services shall be provided by a dentist, or a dental hygienist working directly under the supervision of a dentist, who meets all of the following requirements:
- (a) Provides services consistent with the scope of practice authorized pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1201 *et seq.*) or consistent with the applicable professional practices act within the jurisdiction where services are provided;
 - (b) Is enrolled as a dentist in the District of Columbia Medicaid Program;
 - (c) Complies with Section 1904 (Provider Qualifications) and Section 1905 (Provider Enrollment Process) of Chapter 19 of Title 29 of the DCMR; and
 - (d) Provides services consistent with the standards established by the American Dental Association.
- 1921.5 Each provider of Medicaid reimbursable dental services shall develop a written treatment plan for the person receiving dental services after completion of a comprehensive evaluation. The services provided shall be consistent with the treatment plan.
- 1921.6 The treatment plan shall be updated annually and shall serve as a guide for treatment to be completed over the course of one (1) year unless special circumstances require a longer treatment plan.
- 1921.7 Each provider of Medicaid reimbursable dental services shall maintain records pursuant to the requirements described under Section 1908 (Reporting Requirements) and Section 1909 (Records and Confidentiality of Information) of Chapter 19 of Title 29 of the DCMR.
- 1921.8 If the person enrolled in the Waiver is between the ages of eighteen (18) and twenty-one (21), the Department on Disability Services, Service Coordinator shall

ensure that Early and Periodic Screening, Diagnostic and Treatment benefits are fully utilized and there is no duplication of services.

1921.9 In order to be eligible for Medicaid reimbursement, each dental provider shall comply with the following requirements:

- (a) Confirm the person's Medicaid eligibility; and
- (b) Bill the District of Columbia Medicaid Program using a Waiver provider identification number.

1921.10 Medicaid reimbursement for dental services provided to a person enrolled in the Waiver shall be paid at the reimbursement rate set forth in the District of Columbia Medicaid fee schedule increased by twenty percent (20%). The District of Columbia Medicaid fee schedule is available online at <http://www.dc-medicaid.com>.

Section 1999 (DEFINITIONS) is amended by adding the following:

Dentist - An individual who is licensed to practice dentistry pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201, *et seq.*) or licensed to practice dentistry in the jurisdiction where services are provided.

Dental Hygienist - An individual who is licensed to practice dental hygiene pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201, *et seq.*) or licensed to practice dental hygiene in the jurisdiction where services are provided.

Treatment Plan - A written plan that includes diagnostic findings, preventative care, and treatment recommendations resulting from a comprehensive evaluation of the client's dental health needs.

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF SECOND EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 774; D.C. Official Code § 1-307.02 (2012 Repl. & 2013 Supp.)), and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)), hereby gives notice of the adoption, on an emergency basis, of a new Section 1929, entitled “Residential Habilitation Services”, of Chapter 19 (Home and Community-Based Waiver Services for Persons with Intellectual and Developmental Disabilities) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

This Notice of Second Emergency and Proposed Rulemaking amends the previously published standards governing providers of residential habilitation services for participants enrolled in the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (Waiver). These rules amend the previously published rules by: (1) clarifying words and/or phrases to reflect more person-centered language and simplify interpretation of the rule; (2) establishing that the quarterly reports shall be submitted to the Department on Disability Services (DDS) Service Coordinator within seven (7) business days after the end of each quarter, instead of thirty (30) business days; (3) establishing that providers are only required to maintain and not submit daily progress notes to the DDS Service Coordinator; (4) mandating that residential habilitation providers shall submit verification of passing the DDS Provider Certification Review (PCR) for In-Home Supports or Respite for the past three (3) most recent years and requiring providers with less than three (3) years of PCR certification, to provide verification of a minimum of one (1) year of experience providing residential or respite services to the ID/DD Waiver population and evidence of PCR certification for each year that the provider was enrolled as an Waiver provider in the District of Columbia; (5) deleting the requirement that providers are required to maintain a daily log of a person’s scheduled community activities for monitoring and audit reviews; and (6) updating definitions for terms and phrases used in this chapter.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of Waiver participants who are in need of residential habilitation services. The Waiver serves some of the District’s most vulnerable residents. Residential habilitation services provide essential supports whereby groups of individuals share a home managed by a provider agency. The addition of new professional requirements on the owners and operators of residential habilitation services will enable the provider agency to oversee residential habilitation supports more efficiently, and subsequently improve the overall quality of the services received by the person. In order to ensure that the residents’ health, safety, and welfare are not threatened by the lapse in access to these approved services under the waiver, it is necessary that that these rules be published on an emergency basis.

An initial Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on September 20, 2013 at 60 DCR 13216. Numerous comments were received. Substantive changes have been made as described above. The emergency rulemaking was adopted on January 14, 2014 and became effective on that date. The emergency rules shall remain in effect for one hundred and twenty (120) days or until May 13, 2014 unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*.

The Director of DHCF also gives notice of the intent to take final rulemaking action to adopt these proposed rules in not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

Section 946 (Residential Habilitation) of Chapter 9 (Medicaid Program) of Title 29 (Public Welfare) of the DCMR is repealed.

A new Section 1929 (Residential Habilitation) is added to Chapter 19 (Home and Community-Based Services for Individuals with Intellectual and Developmental Disabilities) of Title 29 (Public Welfare) of the DCMR to read as follows:

1929 RESIDENTIAL HABILITATION SERVICES

- 1929.1 The purpose of this section is to establish standards governing Medicaid eligibility for residential habilitation services under the Home and Community-Based Services Waiver for Persons with Intellectual and Developmental Disabilities (Waiver) and to establish conditions of participation for providers of residential habilitation services.
- 1929.2 Residential habilitation services are supports provided in a home shared by at least four (4), but no more than six (6) persons, to assist each person in acquiring, retaining, and improving self-care, daily living, adaptive and other skills needed to reside successfully in a shared home within the community.
- 1929.3 In order to be eligible for Medicaid reimbursement, residential habilitation services shall be:
- (a) Provided to a person with a demonstrated need for continuous training, assistance, and supervision; and
 - (b) Authorized in accordance with each person's Individual Support Plan (ISP) and Plan of Care.
- 1929.4 In order to be eligible for Medicaid reimbursement, the Waiver provider shall:
- (a) Use observation, conversation, and other interactions, guided by the person-centered thinking process, to develop a functional assessment of the person's capabilities within the first month of the person residing in the home;

- (b) Participate in the development of the ISP and Plan of Care to ensure that the ISP goals are clearly defined;
- (c) Assist in the coordination of all services that a person may receive by ensuring that all recommended and accepted modifications to the ISP are included in the current ISP;
- (d) Develop a support plan with measurable outcomes using the functional analysis, the ISP, Plan of Care, and other information as appropriate, to enable the person to safely reside in the community and maintain their health;
- (e) Propose modifications to the ISP and Plan of Care, as appropriate;
- (f) Review the person's ISP and Plan of Care goals, objectives, and activities at least quarterly and more often, as necessary, and submit the results of these reviews to the DDS Service Coordinator within seven (7) business days of the end of each quarter; and
- (g) Keep daily progress notes as described under Section 1929.15(h).

1929.5

In order to be eligible for Medicaid reimbursement, each provider of residential habilitation services shall ensure that each person receives hands-on support, habilitation, and other supports, when appropriate, which shall include, but not be limited to, the following categories of support:

- (a) Eating and food preparation;
- (b) Personal hygiene;
- (c) Dressing;
- (d) Monitoring health and physical conditions;
- (e) Assistance with the administration of medication;
- (f) Communications;
- (g) Interpersonal and social skills;
- (h) Household chores;
- (i) Mobility;
- (j) Financial management;

- (k) Motor and perceptual skills;
- (l) Problem-solving and decision-making;
- (m) Human sexuality;
- (n) Opportunities for social, recreational, and religious activities utilizing community resources; and
- (o) Appropriate and functioning adaptive equipment.

1929.6 In order to be eligible for Medicaid reimbursement, each provider of residential habilitation services shall ensure that each person receives the professional services required to meet his or her goals as identified in the person's ISP and Plan of Care. Professional services may include, but are not limited to, the following disciplines:

- (a) Medicine;
- (b) Dentistry;
- (c) Education;
- (d) Nutrition;
- (e) Nursing;
- (f) Occupational therapy;
- (g) Physical therapy;
- (h) Psychology;
- (i) Social work;
- (j) Speech, hearing and language therapy; and
- (k) Recreation.

1929.7 In order to be eligible for Medicaid reimbursement, each Waiver provider shall ensure that transportation services are provided in accordance with Section 1904 (Provider Qualifications) of Chapter 19 of Title 29 DCMR.

1929.8 In order to be eligible for Medicaid reimbursement, each Waiver provider of residential habilitation services shall:

- (a) Comply with Sections 1904 (Provider Qualifications) and 1905 (Provider Enrollment Process) of Chapter 19 of Title 29 of the DCMR;
- (b) Provide verification of passing the Department on Disability Services (DDS), Provider Certification Review (PCR) for In-Home Supports or Respite for the last three (3) years. For providers with less than three (3) years of PCR certification, provide verification of a minimum of one (1) year of experience providing residential or respite services to the ID/DD population and evidence of PCR certification for each year that the provider was enrolled as a waiver provider in the District of Columbia;
- (c) Ensure that each residence is accessible to public transportation and emergency vehicles;
- (d) Have an executed, signed, current Human Care Agreement with DDS, if required by DDS; and
- (e) Be licensed as a Group Home for a Person with an Intellectual Disability (Group Home for Mentally Retarded Persons [GHMRP]) in the District of
Columbia or a similarly licensed group home in other states.

1929.9 In order to be eligible for Medicaid reimbursement, the Waiver provider shall demonstrate that a satisfactory rating was received pursuant to the DDS PCR process described under § 1929.8, unless waived by the Director or Deputy Director of DDS.

1929.10 In order to be eligible for Medicaid reimbursement, each GHMRP located in the District of Columbia shall provide services to at least four (4), but no more than six (6) persons and shall meet the following requirements:

- (a) Be licensed pursuant to the Health Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code § 44-501 *et seq.*), no later than sixty (60) days after approval as a Medicaid provider; and
- (b) Comply with the requirements set forth in Chapter 35 of Title 22B of the District of Columbia Municipal Regulations (DCMR).

1929.11 In order to be eligible for Medicaid reimbursement, each out-of-state group home shall serve at least four (4), but no more than six (6) persons. Each group home located out-of-state shall be licensed or certified in accordance with the host state's laws and regulations, consistent with the terms and conditions set forth in

an agreement between the District of Columbia and the host state. Each out-of-state provider shall comply with the following additional requirements:

- (a) Submit to DDS a certificate of registration to transact business within the District of Columbia issued pursuant to D.C. Official Code § 29-105.3 *et seq.*;
- (b) Remain in good standing in the jurisdiction where the program is located;
- (c) Submit to DDS a copy of the annual certification or survey performed by the host state and provider's corrective action plan, if applicable; and
- (d) Allow authorized agents of the District of Columbia government, federal government, and governmental officials of the host state, full access to all sites and records for audits and other reviews.

1929.12 In order to be eligible for Medicaid reimbursement, each Direct Support Professional (DSP) providing residential habilitation services as an agent or employee of a provider shall meet all of the requirements in Section 1906 (Requirements for Direct Support Professionals) of Chapter 19 of Title 29 of the DCMR.

1929.13 An acuity evaluation to set support levels shall be recommended by the Support Team and approved by the DDS Waiver Unit. DDS shall review current staffing levels, available health and behavioral records, and any available standardized acuity instrument results to determine if a person has a health or behavioral acuity that requires increased supports. A person may be assessed at a support level that is consistent with their current staffing level, if other acuity indicators are not in place.

1929.14 The minimum daily ratio of on-duty direct care staff to persons enrolled in the Waiver and present in each GHMRP that serves persons who are not determined by DDS to require a higher acuity level, shall not be less than the following:

- (a) 1:6 during the waking hours of the day, approximately 6:00 a.m. to 2:00 p.m., when persons remain in the GHMRP during the day;
- (b) 1:4 during the period of approximately 2:00 p.m. to 10:00 p.m.; and
- (c) 1:6 during the sleeping hours of the night, approximately 10:00 p.m. to 6:00 a.m.

1929.15 In order to be eligible for Medicaid reimbursement, each provider of residential habilitation services shall maintain the following documents for monitoring and audit reviews:

- (a) A current written staffing plan;
- (b) A written explanation of staffing responsibilities when back-up staff is unavailable and the lack of immediate care poses a serious threat to the person's health and welfare;
- (c) Daily attendance rosters;
- (d) The financial documents required pursuant to the DDS Personal Funds policy available at <http://dds.dc.gov>;
- (e) The records of any nursing care provided pursuant to physician ordered protocols and procedures, charting, and other supports indicated in the physician's orders relating to development and management of the Health Management Care Plan;
- (f) Any documents required to be maintained pursuant to the DDS Health and Wellness Standard Policy available at [http:// dds.dc.gov](http://dds.dc.gov);
- (g) The daily progress notes, containing the following information:
 - (1) A written record of visitors and the person's participation in the visit;
 - (2) A list of all community activities attended by the person and the response to those activities;
 - (3) A list of the start and end time of any services received by the person residing in the residential habilitation facility including the DSP's signature; and
 - (4) A list of any matter requiring follow-up on the part of the service provider or DDS.
- (h) Any documents required to be maintained under Section 1909 (Records and Confidentiality of Information) of Chapter 19 of Title 29 of the DCMR.

1929.16 Each provider shall comply with the requirements described under Section 1908 (Reporting Requirements) and Section 1911 (Individual Rights) of Chapter 19 of Title 29 of the DCMR.

1929.17 Residential habilitation services shall not be billed concurrently with the following Waiver services:

- (a) Environmental Accessibility Adaptation;

- (b) Vehicle Modifications;
- (c) Supported Living;
- (d) Respite;
- (e) Host Home;
- (f) Shared Living;
- (c) In-Home Supports;
- (h) Personal Emergency Response System; and
- (i) Skilled Nursing.

1929.18 Residential habilitation services shall not be reimbursed when provided by a member of the person's family.

1929.19 Reimbursement for residential habilitation services shall not include:

- (a) Cost of room and board;
- (b) Cost of facility maintenance, upkeep, and improvement;
- (c) Activities for which payment is made by a source other than Medicaid;
- (d) Time when the person is in school or employed; and
- (e) Time when the person is hospitalized, on vacation, and not in the care of the residential habilitation provider, or any period when the person is not residing at the GHMRP, and not in the care of the residential habilitation provider, except during an emergency situation when the person is temporarily residing in a hotel or other facility.

1929.20 The reimbursement rate for residential habilitation services shall only include time when staff is awake and on duty and shall include:

- (a) All supervision provided by the direct support staff;
- (b) All nursing provided in the residence for medication administration, physician ordered protocols and procedures, charting, other supports as per physician's orders, and maintenance of Health Management Care Plan;
- (c) Transportation;

- (d) Programmatic supplies and fees;
- (e) Quality assurance costs, such as Incident Management Systems and staff development; and
- (f) General administrative fees for Waiver services.

1929.21 The reimbursement rate for residential habilitation services shall be a daily rate.

1929.22 The reimbursement rate for residential habilitation services for a GHMRP with four (4) persons shall be as follows:

- (a) The Basic Support Level 1 daily rate shall be two hundred and twenty eight dollars (\$228.00) for a direct care staff support ratio of 1:4 for all awake and overnight hours;
- (b) The Moderate Support Level 2 daily rate shall be three hundred sixty dollars (\$360.00) for a direct care staff support ratio of 1:4 for awake overnight and 2:4 during all awake hours when persons are in the home and adjusted for increased absenteeism;
- (c) The Enhanced Moderate Support Level 3 daily rate shall be four hundred and two dollars (\$402.00) for a direct care staff support ratio of 2:4 staff awake overnight and 2:4 during all awake hours when persons are in the home and adjusted for increased absenteeism;
- (d) The Intensive Support daily rate shall be five hundred and twenty dollars (\$520.00) for a direct care staff support ratio of 2:4 staff awake overnight and 3:4 during all awake hours when persons are in the home and adjusted for increased absenteeism; and
- (e) The Intensive Support daily rate shall be five hundred and sixty-nine dollars and forty three cents (\$569.43) for twenty-four (24) hour licensed practical nursing services.

1929.23 The reimbursement rate for residential habilitation services for a GHMRP with five (5) to six (6) persons shall be as follows:

- (a) The Basic Support Level 1 daily rate shall be two hundred eighty-one dollars (\$281.00) for a direct care staff support ratio of 1:5 or 1:6 staff awake overnight and 2:5 or 2:6 during all awake hours when persons are in the home;
- (b) The Moderate Support Level 2 daily rate shall be three hundred twenty-two dollars (\$322.00) for a direct care staff support ratio of 2:5 or 2:6 staff

awake overnight and 2:5 or 2:6 during all awake hours when persons are in the home and adjusted for increased absenteeism;

- (c) The Enhanced Moderate Support Level 3 daily rate shall be three hundred eighty dollars (\$380.00) for a staff support ratio of 2:5 or 2:6 staff awake overnight and 3:5 or 3:6 during all awake hours when persons are in the home and adjusted for increased absenteeism;
- (d) The Intensive Support daily rate shall be four hundred eighty-one dollars (\$481.00) for increased direct care staff support for sleep hours to 2:5 or 2:6 for staff awake overnight support and 4:5 or 4:6 during all awake hours when persons are in the home and adjusted for increased absenteeism; and
- (e) The Intensive Support daily rate shall be five hundred and thirty-one dollars and four cents (\$531.04) for twenty-four (24) hour licensed practical nursing services.

1929.24 The reimbursement rates assume a ninety-three (93) percent annual occupancy, and unanticipated absence from day/vocational services or employment due to illness, and planned absence for holidays.

1929.25 Daily activities may include but are not limited to day habilitation, employment readiness, individualized day supports, supported employment or employment.

Section 1999 (DEFINITIONS) is amended by adding the following:

Group Home for a Person with an Intellectual Disability (GHMRP) - A community residence facility, other than an intermediate care facility for persons with intellectual or developmental disabilities, that provides a homelike environment for at least four (4) but no more than six (6) related or unrelated persons with intellectual disabilities who require specialized living arrangements and maintains necessary staff, programs, support services, and equipment for their care and habilitation.

Comments on the emergency and proposed rule shall be submitted, in writing, to Linda Elam, Ph.D., MPH, Senior Deputy Director/State Medicaid Director, Department of Health Care Finance, 441 4th Street, NW, Suite 900, Washington, D.C. 20001, via telephone on (202) 442-9115, via email at DHCFpubliccomments@dc.gov, or online at www.dcregs.dc.gov, within thirty (30) days after the date of publication of this notice in the *D.C. Register*. Copies of the emergency and proposed rule may be obtained from the above address.

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307.02 (2012 Repl. & 2013 Supp.)), and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)), hereby gives notice of the repeal of Section 933 and adoption of a new Section 1931, entitled “Skilled Nursing Services,” of Chapter 19 (Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

These final rules establish standards governing reimbursement of skilled nursing services provided to participants in the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (ID/DD Waiver) and conditions of participation for providers.

The ID/DD Waiver was approved by the Council of the District of Columbia and renewed by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, for a five-year period beginning November 20, 2012. Skilled nursing services are medical and educational services that address healthcare needs related to prevention and primary healthcare activities. These final rules amend the previously published rules by: (1) clarifying words and/or phrases to reflect more person-centered language and simplify interpretation of the rule; (2) establishing that the physician’s order prescribing the need for skilled nursing services shall be updated at least every ninety (90) calendar days and shall be maintained in the person’s records; (3) establishing that the duties of a registered nurse delivering skilled nursing services shall also include performing a nursing assessment in accordance with the Developmental Disabilities Administration (DDA) health and wellness standards; (4) establishing that the quarterly reports completed by a licensed practical nurse (LPN) shall be reviewed and signed off on by a supervising registered nurse (RN), when an LPN delivers skilled nursing services; (5) deleting the requirement that in order to be eligible for skilled nursing services, the person or support team shall submit at least three (3) bids to the Department of Disability Services (DDS) Service Coordinator for cost comparison; (6) requiring an RN who supervises an LPN to conduct a site visit once every thirty (30) days instead of every sixty two (62) days, or more frequently if applicable; and (7) mandating a provider to maintain a contingency plan when a scheduled nurse is unavailable or when the lack of immediate care poses a threat to the person receiving services.

A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on October 25, 2013 at 60 DCR 15013, and a Notice of Second Emergency and Proposed Rulemaking was published February 14th, 2014 at 61 DCR 001341. No comments were received and no changes have been made. The Director adopted these rules as final on March 21, 2014 and they shall become effective on the date of publication of this notice in the *D.C. Register*.

Section 933 (SKILLED NURSING) of Chapter 9 (MEDICAID PROGRAM) of Title 29 (PUBLIC WELFARE) of the DCMR is repealed.

A new Section 1931 (SKILLED NURSING SERVICES) is added to Chapter 19 (HOME AND COMMUNITY BASED SERVICES WAIVER FOR INDIVIDUALS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES) of Title 29 (PUBLIC WELFARE) of the DCMR to read as follows:

1931 SKILLED NURSING SERVICES

- 1931.1 The purpose of this section is to establish standards governing Medicaid eligibility for skilled nursing services under the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (Waiver) and to establish conditions of participation for providers of skilled nursing services.
- 1931.2 Skilled nursing services are medical and educational services that address healthcare needs related to prevention and primary healthcare activities. These services include health assessments and treatment, health related trainings and education for persons receiving Waiver services and their caregivers.
- 1931.3 To be eligible for Medicaid reimbursement, the person shall exhaust all available skilled nursing visits provided under the State Plan for Medical Assistance (Medicaid State Plan) prior to receiving skilled nursing services under the Waiver.
- 1931.4 To be eligible for Medicaid reimbursement, the person shall have a condition of circulatory or respiratory function complications, gastrointestinal complications, neurological function complications, or the existence of another severe medical condition that requires monitoring or care at least every other hour.
- 1931.5 To be eligible for Medicaid reimbursement, skilled nursing services shall:
- (a) Be ordered by a physician when it is reasonable and necessary to the treatment of the person's illness or injury, and include a letter of medical necessity, a summary of the person's medical history and the duties that the skilled nurse would perform; and a skilled nurse checklist; and
 - (b) Authorized in accordance with each person's Individual Support Plan (ISP) and Plan of Care after all Medicaid State Plan skilled nursing visits have been exhausted.
- 1931.6 The physician's order described in Subsection 1931.5 shall include the scope, frequency, and duration of skilled nursing services, shall be updated at least every ninety (90) calendar days, and shall be maintained in the person's records.

1931.7 In order to be eligible for Medicaid reimbursement, the duties of a registered nurse (RN) delivering skilled nursing services shall be consistent with the scope of practice standards for registered nurses set forth in § 5414 of Title 17 of the District of Columbia Municipal Regulations (DCMR). They may include, at a minimum, but are not limited to the following duties:

- (a) Performing a nursing assessment in accordance with the Developmental Disabilities Administration's Health and Wellness Standards;
- (b) Assisting in the development of the Health Care Management Plan (HCMP);
- (c) Coordinating the person's care and referrals;
- (d) Administering medications and treatment as prescribed by a legally authorized healthcare professional licensed in the District of Columbia or consistent with the requirements in the jurisdiction where services are provided;
- (e) Administering medication or oversight of non-licensed medication administration personnel;
- (f) Providing oversight and supervision to the licensed practical nurse (LPN), when delegating and assigning nursing interventions;
- (g) Providing updates to Department on Disability Services (DDS) every sixty (60) days, if there are any changes to the person's needs or physician's order;
- (h) Training the person, LPN, family, caregivers, and any other individual, as needed; and
- (i) Recording progress notes during each visit and summary notes at least quarterly.

1931.8 In order to be eligible for Medicaid reimbursement, the duties of an LPN delivering skilled nursing services shall be consistent with the scope of practice standards for a licensed practical nurse set forth in Chapter 55 of Title 17 of the DCMR. They may include, at minimum, but are not limited to the following duties:

- (a) Completing the quarterly reports which shall be reviewed and approved by the supervising RN;
- (b) Immediately reporting, immediately, any changes in the person's condition, to the supervising registered nurse;

- (c) Providing wound care, tube feeding, diabetic care, and other treatment regimens prescribed by the physician; and
 - (d) Administering medications and treatment as prescribed by a legally authorized healthcare professional licensed in the District of Columbia. If services are provided in another jurisdiction, the services shall be consistent with that jurisdiction's requirements.
- 1931.9 Medicaid reimbursable skilled nursing services shall be provided by an RN or LPN under the supervision of an RN, in accordance with the standards governing delegation of nursing interventions set forth in Chapters 54 and 55 of Title 17 of the DCMR.
- 1931.10 In order to be eligible for Medicaid reimbursement, each person providing skilled nursing services shall:
- (a) Be employed by a home health agency that has a current District of Columbia Medicaid Provider agreement authorizing the service provider to bill for skilled nursing services; and
 - (b) Comply with Section 1906 (Requirements for Direct Support Professionals) of Chapter 19 of Title 29 of the DCMR.
- 1931.11 In order to be eligible for Medicaid reimbursement, each home health agency providing skilled nursing services shall comply with Section 1904 (Provider Qualifications) and Section 1905 (Provider Enrollment Process) of Chapter 19 of Title 29 of the DCMR.
- 1931.12 To be eligible for Medicaid reimbursement, skilled nursing services shall have prior authorization from DDS.
- 1931.13 In order to be eligible for Medicaid reimbursement, the RN shall monitor and supervise the provision of services provided by the licensed practical nurse, including conducting a site visit at least once every thirty (30) days, or more frequently, if specified in the person's ISP.
- 1931.14 The RN shall ensure that the person's clinical record includes notes that are clearly written and contain a statement of the person's progress or lack of progress, medical conditions, functional losses, and treatment goals that demonstrate that the person's services are and continue to be reasonable and necessary.
- 1931.15 In order to be eligible for Medicaid reimbursement, each provider shall maintain records pursuant to the requirements described under Section 1908 (Reporting Requirements) and Section 1909 (Records and Confidentiality of Information) under Chapter 19 of Title 29 of the DCMR.

- 1931.16 In order to be eligible for Medicaid reimbursement, each home health agency providing skilled nursing services shall ensure that the LPN receives ongoing supervision and that the service provided is consistent with the person's ISP.
- 1931.17 Each skilled nursing provider shall review and evaluate skilled nursing services provided to each person, at least quarterly. The skilled nursing provider shall also maintain a contingency plan that describes how skilled nursing will be provided when the scheduled nurse is unavailable; and, if the lack of immediate care poses a serious threat to the person's health and welfare, how the service will be provided when back-up staff are unavailable.
- 1931.18 Services shall only be authorized for Medicaid reimbursement in accordance with the following provider requirements:
- (a) The person has exhausted all nursing visits allowable under the Medicaid State Plan;
 - (b) DDS provides a written service authorization before the commencement of services;
 - (c) The service name and home health agency delivering services must be identified in the ISP and Plan of Care;
 - (d) The ISP, Plan of Care, and Summary of Supports and Services documents the amount and frequency of services to be received; and
 - (e) Services shall not conflict with the service limitations described under Subsection 1931.20.
- 1931.19 Medicaid reimbursement for skilled nursing services is only available for individuals who live independently in their natural homes or host homes, and shall not be available when provided in a residential habilitation or supported living setting.
- 1931.20 Medicaid reimbursement is not available under the Waiver for skilled nursing visits that exceed fifty-two (52) visits per person annually.
- 1931.21 Upon exhaustion of the hours available for skilled nursing services under the Medicaid State Plan, Medicaid reimbursement may be available for one-to-one extended nursing services for twenty-four (24) hours a day, up to three hundred and sixty-five (365) days, with prior approval from DDS, for persons on a ventilator or requiring frequent tracheal suctioning.
- 1931.22 Prior approval for one-to-one extended nursing services shall be obtained from the Medicaid Waiver Supervisor or designated DDS staff person after submission of documentation demonstrating the need for the extended services.

1931.23 Medicaid reimbursement governing the provision of skilled nursing services shall be developed using the following two (2) rate structures:

- (a) Skilled nursing services rate; and
- (b) Extended skilled nursing services rate.

1931.24 The Medicaid reimbursement rate for skilled nursing services shall be sixty-five dollars (\$65.00) per visit for services provided by an RN or LPN for four (4) hours or less in duration. The Medicaid reimbursement rate for extended RN visits shall be thirty-two dollars (\$32) per hour or eight dollars (\$8) per fifteen minutes for extended RN visits for four (4) hours or less in duration. The Medicaid reimbursement rate for extended LPN visits shall be twenty dollars (\$20.00) per hour or five dollars (\$5) per fifteen minutes for extended visits for four (4) hours or less in duration.

1931.25 A provider shall provide at least eight (8) minutes of service in a span of fifteen (15) continuous minutes to be able to bill a unit of service.

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health Care Finance, pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307.02 (2012 Repl.)), and the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)), hereby gives notice of the adoption of a new Section 1934, entitled “Supported Living Services,” of Chapter 19 (Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

These final rules establish standards governing reimbursement of supported living services provided to participants in the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (ID/DD Waiver) and conditions of participation for providers.

The ID/DD Waiver was approved by the Council of the District of Columbia and renewed by the U.S. Department of Health and Human Services’ Center for Medicaid and Medicare Services, for a five-year period beginning November 20th, 2012. Supported living services are provided to persons with an assessed need for assistance with acquisition, retention, or improvement in skills related to activities of daily living, and the social and adaptive skills necessary to enable persons enrolled in the Waiver to reside and successfully participate in the community. These rules amend the previously published final rules by: (1) establishing that providers of supported living services submit quarterly reports to the DDS Service Coordinator no later than seven (7) business days, instead of thirty (30) business days after the end of each quarter; (2) clarifying that the documents required to be submitted under Subsection 1934.6 are applicable to twenty-four (24) hour supported living with skilled nursing services; (3) clarifying words and/or phrases to reflect more person-centered language and simplify interpretation of the rule; and (4) clarifying that reimbursement for supported living is not available when a person vacations independently or otherwise is not receiving direct care support from a provider.

A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on October 18, 2013 at 60 DCR 14859, and a Notice of Second Emergency and Proposed Rulemaking was published February 7th, 2014 at 61 DCR 001053. Comments were received and considered. A non-substantive change was made to clarify that Medicaid reimbursable supported living services cannot be utilized if a person is on vacation independently, or is not receiving direct staff supports in the supported living facility. The Director adopted these rules as final on March 21, 2014, and they shall become effective on the date of publication of this notice in the *D.C. Register*.

Section 993 (SUPPORTED LIVING SERVICES) of Chapter 9 (MEDICAID PROGRAM) of Title 29 (PUBLIC WELFARE) of the DCMR is repealed.

A new Section 1934 (SUPPORTED LIVING SERVICES) is added to Chapter 19 (HOME AND COMMUNITY-BASED SERVICES WAIVER FOR INDIVIDUALS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES) of Title 29 (PUBLIC WELFARE) of the DCMR to read as follows:

1934 SUPPORTED LIVING SERVICES

- 1934.1 The purpose of this section is to establish standards governing Medicaid eligibility for supported living services under the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (Waiver) and to establish conditions of participation for providers of supported living services for Medicaid reimbursement.
- 1934.2 Supported living services are provided to persons enrolled in the Waiver who have limited informal supports and have an assessed need for assistance with acquisition, retention, or improvement in skills related to activities of daily living, and who require assistance with the development of social and adaptive skills that are necessary to enable the person to reside in the community and successfully participate in community activities.
- 1934.3 To be eligible for all Medicaid reimbursable supported living services, each person shall:
- (a) Have a documented need for assistance with acquisition, retention or improvement in skills related to activities of daily living;
 - (b) Require assistance with the development of social and adaptive skills necessary to enable the person to reside in the community and successfully participate in community activities; and
 - (c) Have an Individual Support Plan (ISP) and Plan of Care that identifies the need for supported living services.
- 1934.4 To be eligible for Medicaid reimbursement, twenty-four (24) hour one-to-one supported living services in a single occupancy supported living residence (SLR), each person shall:
- (a) Have a history of challenging behaviors that may put others at risk;
 - (b) Require intensive supports as determined by a psychological assessment which is updated annually or pursuant to a court order; and
 - (c) Have a behavior support plan (BSP) that identifies the challenging behaviors and the need for one-to-one supervision that was approved by the Department on Disability Services (DDS).

- 1934.5 Persons eligible for Medicaid reimbursable twenty-four (24) hour supported living services with skilled nursing must have a circulatory, respiratory, gastrointestinal, or neurological condition or any other serious medical condition that requires frequent monitoring or at least hourly care.
- 1934.6 To be eligible for Medicaid reimbursable twenty-four (24) hour supported living with skilled nursing services, the following documents shall be required:
- (a) A physician's order or an advanced practice registered nurse's (APRN) order documenting the scope, frequency, and duration of skilled nursing services; and
 - (b) A concise statement which sets forth the presenting problem that requires supported living with skilled nursing services and includes the responsibilities of the nurse.
- 1934.7 In order to be eligible for Medicaid reimbursable supported living periodic services in a supported living residence (SLR), each person shall:
- (a) Demonstrate a need for the acquisition, and improvement of skills related to activities of daily living and the social and adaptive skills necessary for community residence, as indicated in the ISP; and
 - (b) Be willing to be supported in their own home or SLR's without twenty four (24) hour supports and supervision.
- 1934.8 Medicaid reimbursable supported living services shall be provided in one of the following types of residence:
- (a) An SLR owned or leased by a Waiver provider; or
 - (b) A home owned or leased by the person receiving supported living services.
- 1934.9 In order to be eligible for Medicaid reimbursement, each provider, including an out-of-state provider of supported living services, shall be a Waiver provider agency and meet the following requirements:
- (a) Comply with Section 1904 (Provider Qualifications) and Section 1905 (Provider Enrollment Process) of Chapter 19 of Title 29 of the DCMR;
 - (b) Provide verification of passing the DDS Provider Certification Review; and
 - (c) Have at least three (3) years of experience providing in-home supports services or respite services, unless waived by DDS, when applicable.

- 1934.10 In addition to the requirements described under § 1934.9, each out-of-state provider shall comply with the following additional requirements to receive Medicaid reimbursement:
- (a) Remain in good standing in the jurisdiction where the program is located, if licensed or certified by the host state;
 - (b) Submit a copy of the annual certification or survey performed by the host state and provider's corrective action, if applicable, to DDS; and
 - (c) Allow authorized agents of the District of Columbia government, federal government, and governmental officials of the host state full access to all sites and records for audits and other reviews.
- 1934.11 Medicaid reimbursable supported living services may be provided with or without transportation. Each Medicaid provider shall comply with the requirements set forth in Subsection 1904.5 of Title 29 DCMR, if transportation services are provided to enable persons to gain access to Waiver services and other community services and activities in a safe and efficient manner.
- 1934.12 If transportation services are provided by the Direct Support Professional (DSP), such that the DSP drives the person in the vehicle provided by the provider, the DSP shall meet the requirements governing transportation services set forth in Subsections 1904.5(j) and (k) (Provider Qualifications) of Chapter 19 of Title 29 of the DCMR.
- 1934.13 When Medicaid reimbursable supported living services are provided in a SLR, the SLR shall serve one (1) to three (3) related or unrelated persons. With the exception of couples who chose to share a bedroom, the number of persons in the SLR shall not exceed the number of bedrooms in the residence unless written approval from DDS is obtained.
- 1934.14 In order to receive Medicaid reimbursement, the Waiver provider shall include the person living in the residence in the lease, when the SLR is owned or leased by the Waiver provider, unless the person does not meet the leasing eligibility criteria.
- 1934.15 In order to be eligible for Medicaid reimbursement, each SLR located out-of-state shall be licensed or certified in accordance with the host state's laws and regulations and consistent with the terms and conditions set forth in an agreement between the District of Columbia and the host state.
- 1934.16 Each DSP shall meet all of the requirements set forth in Section 1906 (Requirements for Persons Providing Direct Services) of Chapter 19 of Title 29 of the DCMR.

1934.17 Each provider of Medicaid reimbursable supported living services shall assist persons in the acquisition, retention, and improvement of skills related to activities of daily living, and other social and adaptive skills necessary to enable the person to become a fully integrated member of their community. To accomplish these goals, the provider shall:

- (a) Use observation, conversation, and other interactions guided by a person-centered planning process to develop a functional assessment of the person's capabilities within the person's first month of service;
- (b) Develop a support plan with measurable outcomes using the functional assessment that was developed using a person-centered planning process, the ISP and Plan of Care, and other available information;
- (c) Develop and submit a quarterly report to the person, guardian, other members of the Support Team, and the DDS Service Coordinator describing the activities and support provided to help the person achieve identified outcomes and include progress to date; and
- (d) Develop and implement the Health Management Care Plan, when necessary.

1934.18 Each provider of Medicaid reimbursable supported living services shall ensure that each person receives the level of support he/she needs for habilitation and other supports, when appropriate, which shall include, but not be limited to, support for the following categories:

- (a) Eating and food preparation;
- (b) Personal hygiene;
- (c) Dressing;
- (d) Monitoring medication administration and healthcare needs;
- (e) Communications;
- (f) Interpersonal and social skills;
- (g) Household chores;
- (h) Mobility;
- (i) Financial management;
- (j) Motor and perceptual skills;

- (k) Problem-solving and decision-making;
- (l) Human sexuality;
- (m) Opportunity for individual social, recreational, and religious activities utilizing community resources based on the person's interests, beliefs, culture, and preferences; and
- (n) Ensuring that adaptive equipment is appropriate, functioning and well maintained.

1934.19 Each provider of Medicaid reimbursable supported living services shall ensure that staff delivering day habilitation, employment readiness, or supported employment services shall receive training about the person's health care needs as identified by the nurse, and are informed about any needs identified in the person's Health Management Care Plan and BSP.

1934.20 Each provider of Medicaid reimbursable supported living services shall ensure that each person enrolled in the Waiver receives the professional services required to meet his or her goals as identified in the person's ISP and Plan of Care. Professional services may include, but are not limited to, the following disciplines:

- (a) Medicine;
- (b) Dentistry;
- (c) Education;
- (d) Nutrition;
- (e) Nursing;
- (f) Occupational therapy;
- (g) Physical therapy;
- (h) Psychology;
- (i) Social work; and
- (j) Speech, hearing, and language therapy.

1934.21 Each provider of Medicaid reimbursable twenty-four (24) hour supported living services with skilled nursing shall:

- (a) Provide skilled nursing services and supports to the person living in the SLR;
- (b) Complete any skilled nursing assessment and document hourly nursing interventions and treatments; and
- (c) Provide as appropriate, all of the supported living activities listed in Subsections 1934.18 and 1934.19, and Subsection 1934.20.

1934.22 In order to be eligible for Medicaid reimbursement, the duties of a registered nurse delivering twenty-four (24) hour supported living services with skilled nursing shall be consistent with the scope of practice standards for registered nurses set forth in § 5414 of Title 17 of the DCMR. At a minimum, they may include the following duties:

- (a) Prepare an initial routine physical assessment, including an individualized service nursing plan and evaluation;
- (b) Assist in the development of the Health Management Care Plan;
- (c) Coordinate the person's care and referrals;
- (d) Administer medications and treatment as prescribed by a legally authorized healthcare professional licensed in the District of Columbia or consistent with the requirements of the appropriate jurisdiction;
- (e) Provide oversight of non-licensed medication administration personnel;
- (f) Provide wound care, tube feeding, diabetic care, and other treatment regimens prescribed by the physician, as needed;
- (g) Provide oversight and supervision to a licensed practical nurse, when delegating and assigning nursing interventions;
- (h) Record progress notes during each visit and complete quarterly reports; and
- (i) Provide training to the day habilitation, employment readiness, and supported employment staff on the person's healthcare needs by the nurse, including needs identified in the Health Management Care Plan, if applicable.

1934.23 In order to be eligible for Medicaid reimbursement, the duties of a licensed practical nurse delivering twenty-four (24) hour supported living services with skilled nursing, shall be consistent with the scope of practice standards for a

licensed practical nurse set forth in Chapter 55 of Title 17 of the DCMR. At a minimum, they may include the following duties:

- (a) Record progress notes during each visit and quarterly reports;
- (b) Report immediately, any changes in the person's condition, to the supervising registered nurse;
- (c) Provide wound care, tube feeding, diabetic care, and other treatment regimens prescribed by the physician; and
- (d) Administer medications and treatment as prescribed by a legally authorized healthcare professional licensed in the District of Columbia or consistent with the requirements of the jurisdiction in which the healthcare professional is licensed.

1934.24 Medicaid reimbursable supported living one-to-one services in a single occupancy means services provided to one person exclusively by a supported living service provider who has been trained in all general requirements and possesses all training required to implement the person's specific behavioral and/or clinical protocols and support plans for a pre-authorized length of time.

1934.25 Medicaid reimbursable supported living one-to-one services in a single-occupancy SLR shall only be permitted with prior annual approval by the DDS Human Rights Committee and Restrictive Control Review Committee, or a medical treatment plan signed by the person's physician. Providers delivering one-to-one services shall require the person to have a BSP that reflects the need for one-to-one supervision.

1934.26 The BSP shall be developed according to the requirements set forth in the DDA/DDS Behavioral Supports Policy and Procedure available at: <http://dds.dc.gov/DC/DDS/Developmental+Disabilities+Administration/Policies?nav=1&vgnextrefresh=1>

1934.27 If providers of Medicaid reimbursable supported living services are delivering one-to-one supported living services pursuant to a BSP, the assessment shall be updated on an annual basis to determine if the services are necessary.

1934.28 If one-to-one supported living services are delivered pursuant to a court order, the order shall be verified on an annual basis, to determine if the services are necessary.

1934.29 Services shall only be authorized for Medicaid reimbursement in accordance with the following provider requirement procedures:

- (a) DDS shall provide a written service authorization before the commencement of services;

- (b) The service name and Waiver provider delivering services must be identified in the ISP and Plan of Care;
- (c) The ISP, Plan of Care, and Summary of Supports and Services must document the amount and frequency of services to be received; and
- (d) The services to be provided shall not conflict with the service limitations described under Subsection 1934.33.

1934.30 Each provider of Medicaid reimbursable supported living services shall maintain the records as prescribed under Section 1909 of Chapter 29 DCMR for monitoring and audit purposes for each person receiving services and shall also maintain the following documents:

- (a) If providing twenty-four (24) hour supported living services in a single occupancy or one-to-one supports, a copy of the annual BSP or court order;
- (b) A daily log of scheduled activities to include those activities participated in by the person and a schedule of when the person is in his or her home;
- (c) The records of any nursing care, procedures, and other supports related to the development and management of the Health Management Care Plan;
- (d) A record of monitoring and maintenance of adaptive equipment, if applicable;
- (e) A copy of the physician's order or an APRN's order specifying the type, frequency, scope, and duration of the skilled nursing services, if applicable;
- (f) A copy of the job description detailing the duties of the nurse delivering the service, if applicable; and
- (g) A copy of each assessment that the nurse has conducted and documentation of the hourly nursing interventions and treatments, if applicable.

1934.31 Each provider of Medicaid reimbursable supported living services shall meet the requirements described under Section 1908 (Reporting Requirements) and Section 1911 (Individual Rights) of Chapter 19 of Title 29 DCMR.

1934.32 Each provider of Medicaid reimbursable supported living services shall comply with the following requirements:

- (a) Provide access and information as requested for service coordination visits and reviews;

- (b) Review the person's ISP and Plan of Care goals, objectives, and activities at least quarterly and more often, as necessary and submit the results of these reviews to the DDS Service Coordinator no later than seven (7) business days after the end of the first quarter, and each subsequent quarter thereafter;
- (c) Submit a quarterly report to the person, guardian, other members of the Support Team, and the DDS Service Coordinator describing the activities and support provided to help the person achieve his/her identified outcomes and his/her progress to date;
- (d) Propose modifications to the ISP and Plan of Care, as appropriate;
- (e) Participate in ISP and Plan of Care development;
- (f) Assist in the coordination of all services that a person may receive by ensuring that all recommended and accepted modifications to the ISP are amended to the current ISP; and
- (g) Coordinate the delivery of necessary behavioral support services, skilled nursing services, and other services, such as occupational therapy, physical therapy, from approved Waiver providers of those services based on the requirements of the ISP and Plan of Care.

1934.33 Reimbursement for Medicaid reimbursable supported living services shall not include:

- (a) Cost of room and board;
- (b) Cost of facility maintenance, upkeep and improvement, modifications or adaptations to a SLR or home to meet the requirements of the applicable life safety code;
- (c) Safety monitoring as a stand-alone task;
- (d) Activities for which payment is made by a source other than Medicaid;
- (e) Time when the person is in school or employed; and
- (f) Time when the person is hospitalized, on vacation independently, or any other time in which the person is not receiving direct care staff support from a provider.

1934.34 Medicaid reimbursable supported living services shall not include services delivered by the person's relative.

- 1934.35 Medicaid reimbursable supported living skilled nursing services shall not include custodial care.
- 1934.36 Medicaid reimbursable supported living services shall not be authorized concurrently with the following Waiver services:
- (a) Residential Habilitation;
 - (b) Respite;
 - (c) Host Home;
 - (d) Shared Living;
 - (e) In-Home Supports; and
 - (f) Transportation, when the provider chooses to provide supported living services with transportation services.
- 1934.37 The reimbursement rate for Medicaid reimbursable supported living services shall be calculated based on the staff on duty and shall include:
- (a) All supervision of the Direct Support Professional;
 - (b) All nursing provided in the residence for medication administration, physician ordered protocols and procedures, charting, other supports as per physician's orders, and maintenance of a Health Management Care Plan;
 - (c) All transportation, if applicable;
 - (d) Programmatic supplies and fees;
 - (e) Functioning adaptive equipment as ordered by a clinician;
 - (f) Quality assurance costs, such as incident management systems and staff development; and
 - (g) General administrative fees for Waiver services.
- 1934.38 Supported living services shall be Medicaid reimbursable for emergency situations when the person is not physically residing at the SLR or home, but is temporarily residing in a hotel or other facility and continues to receive support from the provider.
- 1934.39 An acuity evaluation to set levels of support shall be determined by the Support Team and approved by the DDS Waiver Unit through review of current staffing levels; available health and behavioral records; and any available standardized

acuity instrument results to determine if a person has a health or behavioral acuity that requires increased supports. A person may be assessed at a support level that is consistent with their current staffing level if other acuity indicators are not in place.

- 1934.40 Skilled nursing that is incorporated into the supported living Medicaid reimbursement rate is for routine physical assessment, the development of the Health Management Care Plan, nursing assessment, oversight of adaptive equipment, assistance with medication administration by non-licensed personnel, or actual administration of medication.
- 1934.41 The Medicaid reimbursement rate for supported living services without transportation shall be as follows:
- (a) Basic Support Level 1: Provides asleep overnight support for a home with three (3) residents and a direct care staff support ratio of 1:3 during all hours when individuals are awake and receiving services. The reimbursement rate shall be two hundred thirty-three dollars (\$233.00) per day;
 - (b) Basic Support Level 2: Provides awake overnight support for a home with three (3) residents and a direct care staff support ratio of 1:3 for staff awake overnight and 1:3 during all awake hours when the residents are receiving services. The reimbursement rate shall be two hundred fifty-two dollars (\$252.00) per day;
 - (c) Moderate Support Level 1: Provides asleep overnight support for a home with three (3) residents and a direct care staff support ratio of 2:3 for eight (8) hours a day, 1:3 during the remaining awake hours, and 1:3 staff asleep overnight coverage. The reimbursement rate shall be two hundred eighty-six dollars (\$286.00) per day;
 - (d) Moderate Support Level 2: Provides awake overnight support for a home with three (3) residents and a direct care staff support ratio of 2:3 for eight (8) hours a day, 1:3 during remaining awake hours, and 1:3 staff awake coverage overnight. The reimbursement rate shall be three hundred eleven dollars (\$311.00) per day;
 - (e) Intensive Support Level 1: Provides support for a home with three (3) residents and a direct care staff support ratio of 1:3 for staff awake overnight and 2:3 during all awake hours when the residents are receiving services and adjusted for increased absenteeism from day and employment programs. The reimbursement rate shall be three hundred forty-eight dollars (\$348.00) per day;

- (f) Intensive Support Level 2: Provides support for a home with three (3) residents and a direct care staff support ratio of 2:3 for staff awake overnight and 2:3 during all awake hours when the residents are receiving services and adjusted for increased absenteeism from day and employment programs. The reimbursement rate shall be four hundred three dollars (\$403.00) per day;
- (g) Basic Support Level 1: Provides asleep overnight support for a home with two (2) residents and a direct care staff support ratio of 1:2 during all hours when individuals are awake and receiving services. The reimbursement rate shall be two hundred and ninety dollars (\$290.00) per day;
- (h) Basic Support Level 2: Provides awake overnight support for a home with two (2) residents and a direct care staff support ratio of 1:2 for staff awake overnight and 1:2 during all awake hours when the residents are receiving services. The reimbursement rate shall be three hundred and eighteen dollars (\$318.00) per day;
- (i) Moderate Support Level 1: Provides awake overnight support for a home with two (2) residents and a direct care staff support ratio of 2:2 for four (4) hours a day, 1:2 during remaining awake hours and 1:2 staff awake coverage over night. The reimbursement rate shall be three hundred and seventy-seven dollars (\$377.00) per day;
- (j) Moderate Support Level 2: Provides support in a SLR with two (2) residents and a direct care staff support ratio of 1:2 for staff awake overnight and 2:2 for eight (8) hours a day, 1:2 during remaining awake hours when residents are in the home and adjusted for increased absenteeism. The rate shall be four hundred and fifty-six dollars (\$456.00) per day;
- (k) Intensive Support Level 1: Provides support in a home with two (2) residents and a direct care staff support ratio of 1:2 for staff awake overnight and 2:2 for all awake hours when residents are in the home and adjusted for increased absenteeism. The rate shall be four hundred and ninety-one dollars (\$491.00) per day;
- (l) Supported living periodic services, as described under Section 1934.6, shall be authorized up to sixteen (16) hours per day without transportation. The hourly rate shall be twenty-one dollars and eighty-four cents (\$21.84) billable in quarter hour units (fifteen minutes) of five dollars and forty-six cents (\$5.46) per billable unit;
- (m) There shall be a specialized service rate for supported living with skilled nursing services, described under Subsection 1934.5. The rate shall be five

hundred and fifty-three dollars and seventy-nine cents (\$553.79) per day without transportation, when there are at least three (3) people living in the SLR or residing in a home that require skilled nursing services and demonstrate extraordinary medical needs; and

- (n) There shall be a specialized service rate for twenty-four hour one-to-one supported living service for a person living in a single occupancy SLR, described under Subsection 1934.4. The rate shall be five hundred eleven dollars and forty nine cents (\$511.49) for asleep overnight staff and five hundred and seventy-four dollars (\$574.00) for one-to-one awake overnight staff.

1934.42 The Medicaid reimbursement rate for supported living services with transportation shall be as follows:

- (a) Basic Support Level 1: Provides asleep overnight support for a home with three (3) residents and a direct care staff support ratio of 1:3 during all hours. The reimbursement rate shall be two hundred fifty one dollars (\$251.00) per day;
- (b) Basic Support Level 2: Provides awake overnight support for a home with three (3) residents and a direct care staff support ratio of 1:3 for staff awake overnight and 1:3 during all awake hours. The reimbursement rate shall be two hundred and seventy dollars (\$270.00) per day;
- (c) Moderate Support Level 1: Provides asleep overnight support for a home with three (3) residents and a direct care staff support ratio of 2:3 for eight (8) hours a day, 1:3 during the remaining awake hours, and 1:3 staff asleep overnight coverage. The reimbursement rate shall be three hundred and four dollars (\$304.00) per day;
- (d) Moderate Support Level 2: Provides awake overnight support for a home with three (3) residents and a direct care staff support ratio of 2:3 for eight (8) hours a day, 1:3 during remaining awake hours, and 1:3 staff awake coverage overnight. The reimbursement rate shall be three hundred and twenty nine dollars (\$329.00) per day;
- (e) Intensive Support Level 1: Provides support for a home with three (3) residents and a direct care staff support ratio of 1:3 for staff awake overnight and 2:3 during all awake hours when the residents are receiving services and adjusted for increased absenteeism from day and employment programs. The reimbursement rate shall be three hundred and sixty six dollars (\$366.00) per day;
- (f) Intensive Support Level 2: Provides support for a home with three (3) residents and a direct care staff support ratio of 2:3 for staff awake

overnight and 2:3 during all awake hours when the residents are receiving services and adjusted for increased absenteeism from day and employment programs. The reimbursement rate shall be four hundred and twenty-one dollars (\$421.00) per day;

- (g) Basic Support Level 1: Provides asleep overnight support for a home with two (2) residents and a direct care staff support ratio of 1:2 staff asleep overnight coverage and 1:2 staff awake coverage when residents are receiving services. The reimbursement rate shall be three hundred and eight dollars (\$308.00) per day;
- (h) Basic Support Level 2: Provides overnight support for a home with two (2) residents and a direct care staff support ratio of 1:2 for staff awake overnight and 1:2 during all awake hours when the resident is receiving services. The reimbursement rate shall be three hundred and thirty six dollars (\$336.00) per day;
- (i) Moderate Support Level 1: Provides awake overnight daily rate for a home with two (2) residents and a direct care staff support ratio of 2:2 for four (4) hours a day, 1:2 during remaining awake hours and 1:2 staff awake coverage over night shall be three hundred and ninety-five dollars (\$395.00) per day;
- (j) Moderate Support Level 2: Provides support a home with two (2) residents and a direct care staff support ratio of 1:2 for staff awake overnight and 2:2 for eight (8) hours a day, 1:2 during remaining awake hours when residents are receiving services and adjusted for increased absenteeism from day and employment programs. The reimbursement rate shall be four hundred and seventy four dollars (\$474.00) per day;
- (k) Intensive Support Level 1: Provides support in a home with two (2) residents and a direct care staff support ratio of 1:2 for staff awake overnight and 2:2 for all awake hours when residents are receiving services and adjusted for increased absenteeism from day and employment programs. The reimbursement rate shall be five hundred and nine dollars (\$509.00) per day;
- (l) Supported Living periodic services, described under Section 1934.6, shall be authorized up to sixteen (16) hours per day. The hourly rate shall be twenty four dollars and thirty six cents (\$24.36) per hour billable in quarter hour units of six dollars and nine cents (\$6.09) per fifteen (15) minute unit; and
- (m) There shall be a specialized service rate for supported living with skilled nursing services, described under Section 1934.5. The reimbursement rate is five hundred and seventy-four dollars and thirteen cents (\$574.13) per

day, when there are at least three (3) people living in the SLR or home that require Skilled Nursing Services and demonstrate extraordinary medical needs.

- (n) There shall be a specialized service rate for twenty-four hour one-to-one supported living service for a person living in a single occupancy SLR, described under Section 1934.4. The reimbursement rate is five hundred thirty-one dollars and eighty-three cents (\$531.83) for asleep overnight staff and five hundred ninety two dollars (\$592.00) for one-to-one awake overnight staff.

- 1934.43 For purposes of staffing and determining the Medicaid reimbursement rates for supported living services, awake hours of the day with absence from day program, weekend, or holiday shall be the time period between 6:00 a.m. to 10:00 p.m., and for purposes of awake hours for all other days shall be the time period from 6:00 a.m. to 10:00 a.m. and 2:00 p.m. to 10:00 p.m.
- 1934.44 For purposes of staffing and determining the Medicaid reimbursement rates for supported living services, the overnight period shall be the time period between 10:00 p.m. to 6:00 a.m.
- 1934.45 The billable unit of service for Medicaid reimbursable supported living services excluding periodic supported living services, shall be one (1) day (*i.e.* twenty-four (24) hours).
- 1934.46 The Medicaid reimbursement rate assumes a ninety-three (93%) annual occupancy and includes any unanticipated absences due to illness from any day/vocational services.
- 1934.47 Each provider of Medicaid reimbursable supported living services shall maintain the staffing ratio, described under Subsections 1934.40 and 1934.41, associated with the approved acuity rate for the residence. The DDA Service Coordinator shall generate an incident report if it is discovered that the staffing ratio is not maintained during DDA's quarterly visits to the SLR.
- 1934.48 The Medicaid provider shall notify the DDS Service Coordinator to schedule a meeting to address the cause of any unanticipated absences that may result in a less than 93% occupancy rate or a reduced staffing ratio.
- 1934.49 Daily activities including participation in day programs such as day habilitation services, individualized day supports services, employment readiness or supported employment services, and are typically scheduled for five (5) hours per day, five (5) days per week. The reimbursement rate for Medicaid reimbursable supported living periodic services shall not include any period of time during which the person is enrolled in a day program.

1934.50 Medicaid reimbursable supported living periodic services are calculated based on the time the person is scheduled to be in their place of residence, except the provider may include the time the person is being transported by the provider to day programs, employment, professional appointments, community activities, and events.

Section 1999 (DEFINITIONS) is amended by adding the following:

Couples - A couple refers to those married or unmarried persons in a relationship, including same-sex relationships.

Health Management Care Plan- A written document designed to evaluate a person's health care status and to provide recommendations regarding the treatment and amelioration of health care issues by identifying types of risk, interventions to manage identified risks, persons responsible for carrying out interventions, and persons responsible for providing an evaluation of outcomes and timeframes.

Person – An individual enrolled in the Home and Community Based Services Waiver for Individuals with Intellectual and Developmental Disabilities.

Supported Living Residence (SLR) - A residence owned or leased by the provider or a residence owned or leased by the person receiving services.

OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

NOTICE OF PROPOSED RULEMAKING

The State Superintendent of Education (“Superintendent”), pursuant to the authority set forth in Sections 3(b)(8), (11), and (17) of the State Education Office Establishment Act of 2000, effective October 21, 2000 (D.C. Law 13-176; D.C. Official Code §§ 38-2602(b)(8), (11), and (17)) (2012 Repl.); the Placement of Students with Disabilities in Nonpublic Schools Amendment Act of 2006, effective March 14, 2007 (D.C. Law 16-269; D.C. Official Code § 38-2561.01 *et seq.*) (2012 Repl.); Article II of An Act to provide for compulsory school attendance, and for other purposes, approved February 4, 1925 (43 Stat. 806; D.C. Official Code §§ 38-202 *et seq.*) (2012 Repl.); and Mayor’s Order 2007-149, dated June 28, 2007, hereby gives notice of his intent to amend Section 2901 (Invoice Submission) of Chapter 29 (Invoice Processing for Special Education Providers Serving District of Columbia Children with Disabilities Funded by the District of Columbia) of Subtitle A (Office of the State Superintendent of Education (“OSSE”)) of Title 5 (Education) of the District of Columbia Municipal Regulations (“DCMR”), as well as Chapter 28 (Certificates of Approval for Nonpublic Special Education Schools and Programs Servicing Students with Disabilities Funded by the District of Columbia and Special Education Rates) of Subtitle A, Title 5, of the DCMR.

In accordance with District of Columbia Official Code § 38-2561.07 through § 38-2561.15 (2012 Repl.), OSSE administers a certificate of approval program governing nonpublic special education schools or programs and establishes the payment rates and invoice processing for tuition and related services provided by nonpublic schools or programs. No District of Columbia agency may fund the placement of a student in a nonpublic special education school or program that does not have a certificate of approval. The certificate of approval program requires OSSE to ensure that students with disabilities who are placed in a nonpublic educational setting receive a free and appropriate public education in compliance with all applicable laws and regulations, including without limitation the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. § 1400, *et seq.* A school or program with a certificate of approval is subject to OSSE monitoring for compliance with all applicable laws and regulations and may lose its certificate of approval for failure to comply with applicable requirements.

This proposed rulemaking amends Section 2901 of Chapter 29 to limit OSSE’s acceptance of invoices for services to no more than three (3) months after the date of services unless a later acceptance date is specifically approved by OSSE. The current regulation limits acceptance of invoices to no more than six (6) months after the date of services.

The proposed amendment to Chapter 28 revises existing regulations. Revisions to these regulations include, among other things: (i) greater flexibility for OSSE to grant a certificate of approval based on the highly specialized needs of a particular child; (ii) clarification of requirements regarding the permissible use of restraint and seclusion, instructional alignment with the local educational agency (LEA) of enrollment, and the obligation to provide student assessments and attend meetings as required by the LEA; (iii) new requirements regarding the obligation to report and address student absences; (iv) changes to the reporting requirements on student discipline and other incidents; (v) modification of the process by which OSSE requires

correction of noncompliance and allowance of an evidentiary hearing on a decision by OSSE to deny, revoke, refuse to renew, or suspend a certificate of approval; (vi) amendment to include all services for which the District of Columbia may seek Medicaid reimbursement; and (vii) establishment of fees for the submission and renewal of a certificate of approval and other actions. The rules have been re-organized and re-numbered for greater clarity.

The Superintendent gives notice of his intent to take final rulemaking action to adopt the proposed rules in not less than sixty (60) days from the date of publication of this notice in the *D.C. Register*. This notice is being circulated throughout the District for a sixty (60) day period, including an opportunity to submit written comments and attend public hearings on these proposals. Two public hearings have been scheduled: for April 29, 2014, between 1:30 p.m. until 3:30 p.m.; and May 6, 2014, between 5:30 p.m. and 7:30 p.m. They will take place at OSSE’s office on the 3rd Floor, 810 1st Street, NE, Washington, D.C. 20002, as detailed and under conditions set forth at the end of this Notice.

Section 2901 (Invoice Submission) of Chapter 29 (Invoice Processing for Special Education Providers Serving District of Columbia Children with Disabilities Funded by the District of Columbia) of Title 5, Subtitle A (Office of the State Superintendent of Education) of the DCMR is amended to read as follows:

2901.9 Invoices submitted more than three (3) months after the date the services were provided shall not be accepted unless specifically approved by and at the discretion of OSSE.

Chapter 28 (Nonpublic Special Education Schools And Programs Serving Students With Disabilities Funded By The District Of Columbia And Special Education Rates) of Title 5, Subtitle A (Office of the State Superintendent of Education) of the DCMR is amended as follows:

CHAPTER 28 CERTIFICATES OF APPROVAL FOR NONPUBLIC SPECIAL EDUCATION SCHOOLS AND PROGRAMS SERVING STUDENTS WITH DISABILITIES FUNDED BY THE DISTRICT OF COLUMBIA AND SPECIAL EDUCATION RATES

2800 AUTHORITY AND PURPOSE

2800.1 This chapter is promulgated pursuant to the Placement of Students with Disabilities in Nonpublic Schools Amendment Act of 2006, effective March 14, 2007 (D.C. Law 16-269; D.C. Official Code §§ 38-2561.01 through 38-2561.15) (2012 Repl.) (“Placement Act”); Mayor’s Order 2007-149 (June 28, 2007); Sections 3(b) (8), (11), and (17) of the State Education Office Establishment Act of 2000, effective October 21, 2000 (D.C. Law 13-176; D.C. Official Code §38-2602(b) (8), (11), and (17)) (2012 Repl.); and Article II of An Act to provide for compulsory school attendance, and for other purposes, approved February 4, 1925 (43 Stat. 806; D.C. Official Code §§ 38-201 *et seq.*) (2012 Repl.).

2800.2 The Office of the State Superintendent of Education (OSSE) may issue a certificate of approval to a nonpublic special education school or program, including a residential treatment or psychiatric residential treatment facility (“PRTF”) operating an educational program, serving students with disabilities funded by the District of Columbia. The purpose of the certificate of approval process is to maintain oversight of nonpublic special education schools or programs to ensure that every District of Columbia student with a disability is afforded a high quality education in the least restrictive environment.

2801 APPLICATION FOR A CERTIFICATE OF APPROVAL

2801.1 Consistent with Section 3 of the Placement of Students with Disabilities in Nonpublic Schools Amendment Act of 2006, effective March 14, 2007 (D.C. Law 16-269; D.C. Official Code § 38-2561.03 (2012 Repl.), unless the placement of a student has been ordered by a District of Columbia Court, federal court, or hearing officer pursuant to IDEA and after the required findings have been made, no student whose education, including special education or related services, is funded by the District of Columbia government shall be placed in a nonpublic special education school or program that:

- (a) Allows the use of aversive intervention in its policy or practice; or
- (b) Has not received and maintained a Certificate of Approval in accordance with D.C. Official Code § 38-2561.03 (2012 Repl.) and the provisions of this chapter.

2801.2 Except as provided in Subsection 2801.1, a nonpublic special education school or program shall not accept a placement of a District of Columbia student with a disability whose education is funded by the District of Columbia government unless it first submits an application for, on a form approved by OSSE, and receives and maintains a certificate of approval in accordance with this chapter. An application is required for an initial certificate of approval and for renewal of an existing certificate of approval.

2801.3 A student with a disability may be placed at a nonpublic special education school or program without a certificate of approval if the placement is by order of a court of law or a due process hearing officer decision pursuant to 34 C.F.R. § 300.51.

2801.4 A nonpublic special education school or program without a certificate of approval that accepts a District of Columbia student placed in that school or program by order of a court of law or due process hearing officer decision pursuant to 34 C.F.R. § 300.513 must apply for a certificate of approval within ninety (90) calendar days after the date of accepting that student and must immediately comply, at a minimum, with Sections 2811 through 2828 and Section 2834 of this subtitle upon accepting the student, unless otherwise exempted by OSSE.

- 2801.5 OSSE shall not accept or consider incomplete applications. If a nonpublic special education school or program's initial application or application for renewal is incomplete, OSSE will notify the school of the nature of the deficiency. If the school does not complete its application within thirty (30) calendar days, the application will be deemed withdrawn.
- 2801.6 A nonpublic special education school or program may not apply for a certificate of approval if the school or program had a certificate of approval, previously issued by OSSE, revoked or denied less than three (3) years prior to the application.
- 2801.7 OSSE shall only accept a complete application from a nonpublic special education school or program that does not operate in the District of Columbia, only when there is a need, as determined by OSSE, of District of Columbia students for the program or services offered by the nonpublic school or program that could not be met by another nonpublic special education school or program with a certificate of approval.

2802 AWARD OF CERTIFICATE OF APPROVAL

- 2802.1 In determining whether to grant or renew a certificate of approval, OSSE shall review the applicant's program for compliance with the requirements of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 *et seq.*); applicable District of Columbia regulations governing grades, promotions, graduation and student discipline; and the requirements of this chapter. OSSE shall also require the nonpublic special education school or program to ensure that it is in compliance with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), the Americans with Disabilities Act of 1990, as amended (42 U.S.C. § 12132), Title VI of the Civil Rights Act of 1964, as amended (45 U.S.C. § 2000d, *et seq.*), and Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683).
- 2802.2 A nonpublic special education school or program shall not be granted or allowed to maintain a certificate of approval unless it obtains and maintains documentation verifying compliance with all applicable fire, safety, building code, health, lead paint and sanitation requirements, and any other inspections that may be required by local or state authorities.
- 2802.3 A nonpublic special education school or program shall not be granted or allowed to maintain a certificate of approval if the school or program does not prohibit by policy and practice aversive interventions.
- 2802.4 OSSE shall conduct an on-site inspection and may, as appropriate, consult with counterparts in the host state, District agencies or other relevant stakeholders prior to granting a certificate of approval.

2802.5 A nonpublic special education school or program shall operate in a manner consistent with the specifications of the certificate of approval. A certificate of approval cannot be extended, assigned, or transferred to additional operating sites of the nonpublic special education school or program or to the provision of services to students in age or grade ranges, or disability categories which are not included on the school's application and noted on the school's certificate of approval. A nonpublic special education school or program may request such changes to an existing certificate of approval through an amendment to its application as described in Title 5, Subtitle A, Section 2805 of the DCMR.

2802.6 A nonpublic special education school or program must submit an initial application for any new branch or campus not covered by the existing certificate of approval.

2803 PROVISIONAL CERTIFICATE OF APPROVAL

2803.1 Upon review of an initial application, OSSE may, in its discretion, grant a provisional certificate of approval upon a showing that the nonpublic school or program complies with the requirements listed below. A provisional COA may be granted in other instances. OSSE shall indicate the time or times by which the school or program shall meet the remaining requirements of this chapter to establish full approval status.

- (a) The Individuals with Disabilities Education Act (20 U.S.C. § 1400 *et seq.*);
- (b) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794);
- (c) The Americans with Disabilities Act of 1990, as amended (42 U.S.C. § 12132);
- (d) Title VI of the Civil Rights Act of 1964, as amended (45 U.S.C. § 2000d, *et seq.*);
- (e) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683);
- (f) Applicable fire, safety, building code, health, lead paint and sanitation requirements;
- (g) Inspection requirements of local or state authorities;
- (h) The school or program does not employ aversive intervention by policy or practice;

- (i) The school or program does not employ chemical, mechanical, or prone restraint by policy or practice;
- (j) The school or program does not employ seclusion interventions lasting more than sixty (60) minutes by policy or practice;
- (k) The school or program documents all restraint or seclusion interventions consistent with Section 2822 of these regulations; and
- (l) Any other standards in this chapter as determined by OSSE.

2803.2 OSSE may revoke a provisional certificate of approval issued pursuant to Subsection 2803.1 if the school fails to maintain compliance with the provisions in Subsection 2803.1. In such case, the application shall be treated as an initial application and all standards and procedures of this chapter shall apply.

2803.3 OSSE may, in its discretion, grant a provisional certificate of approval to a nonpublic special education school or program that does not meet one or more of the standards of this chapter, but only in exceptional circumstances as determined by OSSE, based on the educational needs of a particular student or students. In such cases, OSSE shall only grant provisional approval upon a showing that the school or program complies with the following:

- (a) The Individuals with Disabilities Education Act (20 U.S.C. § 1400 *et seq.*);
- (b) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794);
- (c) The Americans with Disabilities Act of 1990, as amended (42 U.S.C. § 12132);
- (d) Title VI of the Civil Rights Act of 1964, as amended (45 U.S.C. § 2000d, *et seq.*);
- (e) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683);
- (f) Applicable fire, safety, building code, health, lead paint and sanitation requirements;
- (g) Inspection requirements of local or state authorities;
- (h) The school or program does not employ aversive intervention by policy or practice; and

- (i) Any other standards in this chapter as determined by OSSE.

2803.4 A nonpublic special education school or program granted a provisional certificate of approval under Subsection 2803.3 of this section shall be allowed to maintain the certificate of approval only for as long as the school or program serves the student(s) with the exceptional circumstances. The school or program may not accept other students without prior approval by OSSE.

2804 VALIDITY OF CERTIFICATE OF APPROVAL

2804.1 A certificate of approval is valid for up to three (3) years after the date of issuance. The expiration date shall be clearly indicated on the certificate.

2804.2 A certificate of approval shall be void if:

- (a) The nonpublic special education school or program ceases providing educational programs or files for bankruptcy or dissolution;
- (b) The certificate of approval has expired and the nonpublic school did not submit a complete application for renewal within the applicable timelines in Section 2807; or
- (c) The certificate of approval is revoked by OSSE.

2805 CHANGED CIRCUMSTANCES AND AMENDMENT TO THE CERTIFICATE OF APPROVAL

2805.1 A nonpublic special education school or program shall notify OSSE in writing before a change in circumstances occurs. A change in circumstances includes, without limitation, a change of ownership or leadership, accreditation status, location, hours or days of operation, or educational and therapeutic services offered or other form of change in operation that is inconsistent with information or specifications submitted to OSSE.

No less than sixty (60) calendar days before the change in circumstances, the nonpublic school or program must:

- (a) Notify OSSE in writing; and
- (b) Submit to OSSE specific documentation to describe the change including but not limited to, additional information regarding the change in circumstances as may be requested by OSSE. If the change of circumstance affects IEP service delivery, transportation, or school operations, the nonpublic special education school or program shall submit a detailed proposed plan to ensure continued compliance with IDEA and District of Columbia regulations.

- 2805.2 The nonpublic special education school or program shall notify the LEA and OSSE of an unanticipated change of circumstances with a written report about such change of circumstances no later than fifteen (15) calendar days after the date of such change.
- 2805.3 A nonpublic special education school or program shall request an amendment to the certificate of approval for any of the following changed circumstances:
- (a) A change in ownership;
 - (b) A change in location; or
 - (c) A change in the provision of services.
- 2805.4 If, after reviewing the notice of change in circumstances and any related information or materials, OSSE determines that the school or program satisfies the requirements for obtaining a certificate of approval, OSSE shall approve the request for amendment and/or change in circumstance documentation or plans as described in Subsections 2805.1 (b) or 2805.3 of this section. Upon approval by OSSE, the nonpublic school or program shall provide ongoing status updates in the implementation of change in circumstance plans including but not limited to the following instances:
- (a) If the change in circumstance plan approved by OSSE subsequently changes;
 - (b) If the nonpublic school or program anticipates delays in submission of materials to OSSE as part of the change in circumstance plan;
 - (c) When the nonpublic school or program updates other stakeholders (*e.g.*, parents, LEAs, etc.) regarding the change in circumstance.
- 2805.5 After review and approval of change of circumstances documentation submitted by the nonpublic school or program, OSSE shall amend the certificate of approval or modify OSSE's records regarding the school or program's status to reflect the change in circumstances upon a showing that the nonpublic special education school or program complies with the standards of this chapter.

2806 EXPIRATION OF A CERTIFICATE OF APPROVAL

- 2806.1 It is the responsibility of the nonpublic special education school or program to submit a timely application for renewal of its certificate of approval. The failure to submit a timely renewal application shall result in an automatic expiration of the certificate of approval as of the date of expiration on the certificate of

approval. Upon expiration, the school or program may not serve District of Columbia students.

2807 RENEWAL OF AN EXISTING CERTIFICATE OF APPROVAL

2807.1 A nonpublic special education school or program may have its certificate of approval renewed for up to three (3) years at a time. An application for renewal must be submitted by the nonpublic special education school or program not later than one hundred and eighty (180) calendar days prior to the expiration date of the current certificate of approval, using a standard renewal form which shall be published by OSSE.

2807.2 OSSE may decline to renew a certificate of approval for any reason pursuant to D.C. Official Code § 38-2561.11 (2012 Repl.) and this chapter.

2808 EXTENSION OF A CERTIFICATE OF APPROVAL

2808.1 OSSE may in its discretion extend a certificate of approval pending final action on an application for renewal.

2809 CERTIFICATION LIST

2809.1 OSSE shall publish and make available the list of nonpublic special education schools or programs, including the current level of approval of each school or program.

2810 APPLICATION AND OTHER FEES

2810.1 A nonpublic school or program seeking a certificate of approval shall pay the following fees:

- (a) Initial application One hundred dollars (\$100);
- (b) Pre-approval inspection One hundred dollars (\$100);
- (c) Renewal application Seventy-five dollars (\$75); and
- (d) Returned check fee Twenty-five dollars (\$25).

2810.2 Fees are non-transferrable and non-refundable.

2810.3 In the case of a nonpublic special education school or program without an existing certificate of approval, OSSE may waive an initial application or other applicable fee if OSSE or another District of Columbia agency seeks to have a District of Columbia student accepted by the school or program.

2811 FACILITIES, RESOURCES, AND MATERIALS

- 2811.1 A nonpublic special education school or program shall provide the facilities, textbooks, equipment, technology, materials, and supplies needed to provide the special education and related services specified by the IEPs of its enrolled students.
- 2811.2 A nonpublic special education school or program shall provide all resources and materials required to accommodate students with disabilities in obtaining, as specified in their IEPs, a regular high school diploma or alternative certificate of completion in accordance with District of Columbia standards.
- 2811.3 A nonpublic special education school or program shall not deliver instruction online or through some other form of distance learning except as expressly authorized by the LEA of enrollment in accordance with the LEA of enrollment's policy or standards for online or distance learning.

2812 INDIVIDUALIZED EDUCATION PROGRAMS AND GRADUATION PLANNING

- 2812.1 Nonpublic special education schools or programs that serve District of Columbia students with disabilities shall provide special education and related services in accordance with the student's IEP.
- 2812.2 The LEA of enrollment and the nonpublic special education school or program are both responsible for ensuring that the student has a complete and current IEP. The LEA is responsible for ensuring compliance with the IDEA and student progress toward academic and IEP goals and, consistent with that responsibility, may request that the nonpublic school or program provide information to ensure compliance. A nonpublic special education school or program shall work with the LEA of enrollment to maintain compliance with the IDEA as follows:
- (a) If the nonpublic special education school or program becomes unable to implement any portion of the student's IEP, the school or program shall immediately notify the LEA of enrollment in writing and consult with the LEA of enrollment about whether an IEP team meeting is required;
 - (b) If the nonpublic special education school or program becomes aware that the student's IEP is not being fully implemented due to factors beyond its control the school or program shall immediately notify the LEA of enrollment in writing and consult with the LEA of enrollment about whether an IEP team meeting is required;
 - (c) If it appears to the nonpublic special education school or program that a required timeline for an evaluation, reevaluation or any other timeline

specified in the IDEA has lapsed or will imminently lapse, the school or program shall immediately notify the LEA of enrollment in writing; and

- (d) In the event that the LEA of enrollment convenes an IEP team meeting, whether as a result of a situation referred to in paragraph (a) or (b) above or otherwise, the nonpublic special education school or program shall assist the LEA of enrollment in convening the meeting and respect the due process rights afforded to a student and his or her parents under the IDEA.

2812.3 Pursuant to 34 C.F.R. § 300.325(b), a nonpublic special education school or program shall initiate IEP team meetings when requested by the LEA in writing.

- (a) The nonpublic special education school or program shall provide written notification of all IEP team meetings that it initiates and invite the LEA of enrollment and all required team members, including relevant nonpublic school staff.
- (b) The notice shall include the time, date, and location of the meeting.
- (c) The nonpublic special education school or program shall document its attempts to invite the LEA of enrollment to the IEP team meeting, as well as the LEA's involvement with any IEP team decision and the LEA's agreement with any proposed changes to the IEP which result from any meeting.

2812.4 A nonpublic special education school or program shall require one (1) or more of its staff to attend meetings to review or determine a student's placement as requested by the LEA.

2812.5 The LEA of enrollment shall ensure that all data required by OSSE regarding a student with a disability enrolled in a nonpublic special education school or program is entered into the District of Columbia's Special Education Data System ("SEDS") and that such data is accurate, up-to-date, and complete. OSSE shall provide SEDS access to a nonpublic special education school or program limited to the students enrolled in the school or program and in a manner consistent with the Family Educational Rights and Privacy Act of 1974 ("FERPA"). Each nonpublic special education school and program shall cooperate with the LEA to maintain each enrolled student's IEP in SEDS. The failure to maintain current data as well as other actions or omissions that lead to incomplete data shall be considered a failure to provide information requested by the SEA in violation of D.C. Official Code § 38-2561.11(a)(4) (2012 Repl.).

2812.6 A nonpublic special education school or program shall implement all components of each student's IEP, unless it has been specifically agreed by the IEP team and authorized by the LEA and documented in writing that an entity other than the school or program will implement an item or items on the IEP. If the service is

provided by an entity other than the nonpublic special education school or program, the service must be invoiced pursuant to the provisions of Title 5, Subtitle A, Chapter 29 of the DCMR.

- 2812.7 Pursuant to 34 C.F.R. § 300.325(c), the LEA of enrollment shall remain responsible for compliance with the requirements of the IDEA for students served by nonpublic special education schools or programs, and OSSE shall monitor the LEA of enrollment's compliance with these requirements.
- 2812.8 When requested by the LEA of enrollment, the nonpublic special education school or program shall administer or arrange assessments and screenings to determine continued eligibility for special education and related services as required by 34 C.F.R. § 300.303 or for any other purpose under the IDEA. As provided in Title 5, Subtitle E, Section 3006 of the DCMR, the IEP team shall determine the continued eligibility of a child. Relevant members of the nonpublic school staff shall participate in an IEP team meeting to determine continued eligibility of a child when requested by the LEA.
- (a) The nonpublic special education school or program shall administer or arrange for the provision of assessments and screenings consistent with the IDEA and any hearing officer decision governing the assessment and screenings pursuant to 34 C.F.R. § 300.513; and
 - (b) The nonpublic special education school or program shall submit an invoice to OSSE for any assessments and screenings in the next invoicing period at OSSE established rates in accordance with OSSE's rate confirmation.
- 2812.9 As part of the IEP team process, staff members of the nonpublic special education school or program who are members of the student's IEP team shall ensure that each IEP:
- (a) Meets all the requirements of the IDEA, 20 U.S.C. § 1414(d); and 34 C.F.R. §§ 300.320; 300.321; 300.322 and 300.324;
 - (b) Contains a Behavior Intervention Plan ("BIP"), whenever appropriate, that is based on a Functional Behavior Assessment ("FBA") and includes a plan for emergency behavioral interventions; and
 - (c) Provides for extended school year services ("ESY") only if the IEP team decides, on an individual basis, that ESY services are necessary for the provision of a free appropriate public education ("FAPE") to the student.
- 2812.10 The nonpublic special education school or program shall ensure that a parent is able to understand the proceedings of an IEP meeting and shall arrange for an

interpreter for parents with deafness or whose native language is other than English.

2812.11 A nonpublic special education school or program shall monitor how each student is making progress toward meeting the annual goals of the IEP and produce written reports for the parent(s) and the LEA of enrollment on at least a quarterly basis.

2812.12 A nonpublic special education school or program shall monitor how each student is making progress toward meeting the graduation requirements of the LEA of enrollment and produce a written report for the parent(s) and the LEA of enrollment on at least an annual basis.

2812.13 A nonpublic special education school or program shall ensure that the confidentiality of student records is kept strictly in accordance with FERPA, and any other applicable privacy laws and regulations.

2813 IMPLEMENTATION OF HEARING OFFICER DECISIONS AND SETTLEMENT AGREEMENTS

2813.1 A nonpublic special education school or program shall implement all services ordered by any Hearing Officer Decision (“HOD”) pursuant to 34 C.F.R. § 300.513, or a Settlement Agreement (“SA”) entered into pursuant to 34 C.F.R. § 300.510(d) or 300.506(b)(6) with respect to each attending student, including providing all assessments and any items of compensatory education, unless it is specifically agreed and documented by the IEP team that a service or services shall be provided by an entity other than the nonpublic special education school or program. Failure of an LEA timely to notify a nonpublic school or program of an HOD or SA will not result in any adverse findings against the nonpublic school or program. Compensatory education ordered by an HOD or agreed to by the LEA in a settlement agreement shall be paid for by the LEA.

2813.2 In the event that the nonpublic special education school or program is or becomes unable to implement any aspect of a student’s HOD or SA, including for the reason that the language of a HOD or SA is unclear, not sufficiently specific or not in accordance with subsequent decisions made by the IEP team, the nonpublic special education school or program shall immediately notify in writing the LEA that is a party to the HOD or SA.

2813.3 A nonpublic special education school or program shall immediately notify in writing the LEA that is a party to the HOD or SA if it appears to the nonpublic special education school or program that a required timeline for an evaluation, reevaluation or other compliance requirement of a HOD or SA has lapsed or will imminently lapse. The nonpublic special education school or program shall also consult with the LEA that is a party to the HOD or SA regarding whether an IEP

team meeting is required and assist the LEA with any IEP team meeting that may be scheduled in regard to compliance with the HOD or SA.

2814 TRANSITIONS TO LESS RESTRICTIVE SETTINGS

2814.1 In accordance with the IDEA requirement that students be placed in the least restrictive environment, IEP planning and service delivery by LEAs of enrollment and nonpublic special education schools or programs shall be designed to support the transition of a student to a less restrictive setting when determined appropriate by the IEP team. The nonpublic special education school or program shall ensure that the IEP teams for students attending the school or program consider a student's transition status at least annually as a component of annual IEP review.

2814.2 When an IEP team member believes that a District of Columbia student is ready to transition into a less restrictive setting, an IEP team meeting shall be convened to discuss a change in placement, consistent with the IDEA.

2815 CURRICULUM, GRADES, AND PROMOTION REQUIREMENTS

2815.1 Prior to accepting a student, the nonpublic school or program must certify to OSSE and the LEA of enrollment that the school or program can meet the curricular requirements for graduation from the LEA of enrollment.

2815.2 Except as provided in Subsection 2815.3 of this section, a nonpublic special education school or program that serves District of Columbia students with disabilities shall ensure instructional alignment with the District of Columbia's learning standards, grades, promotion, and graduation requirements, consistent with Title 5 of the DCMR, including compliance with any amendments to these respective policies, procedures, and rules.

2815.3 A nonpublic special education school or program that serves District of Columbia students with disabilities that cannot ensure instructional alignment must obtain authorization from the LEA of enrollment prior to any deviation from LEA requirements and submit such authorization to OSSE.

2815.4 A nonpublic special education school or program shall adhere to the grades and promotion policies and procedures of the LEA of enrollment in which each student is enrolled as well as District of Columbia graduation requirements.

2815.5 Nonpublic special education schools or programs that serve District of Columbia students with disabilities that cannot adhere to the grades and promotion policies and procedures of the LEA of enrollment must obtain authorization from the LEA of enrollment prior to any deviation from LEA requirements and submit such authorization to OSSE.

2816 LEARNING TIME

- 2816.1 The school year of a nonpublic special education school or program shall include a minimum of one hundred eighty (180) regular instructional school days, exclusive of any Extended School Year (ESY) period mandated by an IEP.
- 2816.2 Each regular instructional school day shall be at least six (6) hours in length for students, inclusive of time allotted for lunch periods, recesses, and class breaks, except that the six (6) hour minimum instructional school day requirement shall not be applicable to any evening school program, prekindergarten program, or other alternative program approved by OSSE.
- 2816.3 A nonpublic special education school or program that seeks to incorporate a school day that does not meet the six (6) hour minimum into the academic calendar shall submit a verification that other instructional days have been lengthened in order to ensure that the average number of instructional hours over the course of the school calendar meets or exceeds six (6) hours per day. This includes, but is not limited to, a routine early release day held in order to provide documented professional development or other mandatory faculty co-planning.

2817 STATE-WIDE ASSESSMENTS

- 2817.1 In accordance with Chapter 23 of Title 5, Subtitle A, and Section 3019 of Title 5, Subtitle E of the DCMR, every nonpublic special education school or program shall ensure that every District of Columbia student with an IEP attending a nonpublic special education school or program is appropriately included in either the District of Columbia statewide assessment or alternate assessment approved by OSSE. A nonpublic special education school or program shall ensure that statewide assessments are administered according to the test security guidelines published by OSSE.
- 2817.2 The nonpublic special education school or program shall ensure that, when appropriate, a student's IEP shall include a specific determination that a student is eligible for participation in the alternate assessment based upon the alternate academic achievement standards, OSSE guidelines for participation in alternate assessments, and other applicable guidance issued by OSSE.
- 2817.3 Unless specifically required by a student's IEP, the nonpublic special education school or program and the LEA of enrollment shall not substitute an alternate assessment based on alternate academic achievement standards for the general statewide assessment for any student.

2818 INDIVIDUALIZED BEHAVIOR SUPPORT AND DISCIPLINE

- 2818.1 All nonpublic special education schools and programs must ensure compliance with the IDEA's discipline procedures and related procedural safeguards. Behavior support programs and plans used by a nonpublic special education

school or program shall be based on an individual behavior intervention plan and the utilization of school-wide positive behavior intervention supports.

- 2818.2 All nonpublic special education schools and programs shall be prohibited from using demeaning, violent, or coercive treatment with students. When an emergency intervention is needed to address problem behavior, the type of intervention chosen shall be the least intrusive necessary.
- 2818.3 A nonpublic special education school or program shall notify the LEA of enrollment within one (1) business day of a decision by the school or program to suspend or expel a student.
- 2818.4 OSSE will collect disciplinary data from nonpublic schools and the LEA of enrollment on at least an annual basis. A pattern or practice of using suspension as a behavioral management technique shall be grounds to revoke a school's certificate of approval.

2819 STUDENT-INITIATED TIME AWAY FROM STRUCTURED ACTIVITY

- 2819.1 A nonpublic special education school or program shall allow students to initiate time away from structured activity as a means of regaining self-control. Student-initiated time away from structured activity:
- (a) Shall occur in designated areas within the classroom or, as appropriate and as outlined and measured in a student's Behavior Intervention Plan ("BIP"), in other areas within the school, as long as there is direct supervision;
 - (b) Be documented in a student's BIP;
 - (c) Be monitored for effectiveness; and
 - (d) May not be imposed upon a student as a form of seclusion or punishment.

2820 USE OF RESTRAINTS

- 2820.1 The use of physical restraints is prohibited in all nonpublic special education schools and programs except:
- (a) When the intervention is necessary in emergency circumstances, as defined in this chapter, to protect the student or other person from imminent, serious physical harm; and other less intrusive, nonphysical interventions have failed or been determined inappropriate; or

- (b) Where the use of restraint is included in the student's IEP to address specific behaviors under defined circumstances, and the use by appropriate staff is therefore consistent with the student's IEP.
- 2820.2 Any physical restraint shall be applied only by nonpublic special education school or program personnel who are trained and certified in the appropriate use of specific, evidence-based techniques. Copies of training certifications shall be maintained on file at the nonpublic special education school or program.
- 2820.3 The use of physical restraints in cases of an emergency shall be limited to the use of reasonable force and to the shortest time period necessary to protect the student or other person from imminent, serious physical harm. The restraint must end as soon as the student or other person is no longer in imminent danger. Nonpublic special education school or program personnel shall provide the student with an explanation of the behavior that resulted in the restraint and instructions on the behavior required to be released from the restraint. A member of the staff shall personally observe the student during the entire duration of the use of the restraint in order to assess the need for continued restraint.
- 2820.4 Nonpublic special education schools and programs shall not use restraints, under any circumstances, as a means of coercion, discipline, convenience or retaliation by staff with District of Columbia students.
- 2820.5 Physical restraint is prohibited as a means of punishment or as a response to property destruction, disruption of school order, a student's refusal to comply with a nonpublic special education school or program rule or staff directive, or language that does not constitute a threat of imminent, serious physical harm.
- 2820.6 The use of restraints is limited or prohibited as follows:
- (a) No physical restraint shall be administered in such a way that the student's breathing or speaking is restricted. During the restraint, a staff member shall continuously monitor the physical status of the student, including skin color and respiration. The restraint shall be released immediately upon a determination by a staff member that the student or other person is no longer at risk of causing imminent, serious physical harm, or the authorized use of restraint in a student's IEP has been satisfied. A staff member shall continuously assess the student to determine if medical attention is required.
- (b) If the student uses sign language or an augmentative mode of primary communication, the student shall be permitted to have the student's hands free of restraint for brief periods, unless the staff member determines that such freedom appears likely to result in harm to self or others. The restraint must end as soon as the student is no longer at risk of causing

imminent, serious physical harm or the authorized use of restraint in a student's IEP has been satisfied.

- (c) Except in emergency circumstances or as authorized in a student's IEP, the use of restraint practices with a student whom the nonpublic special education school or program knows has been sexually or physically abused is prohibited.
- (d) Except in emergency circumstances or as authorized in a student's IEP, no physical restraint shall be administered if the student has a medical or psychological condition contraindicative to restraint. The use of chemical restraints is prohibited in all nonpublic special education schools and programs. A drug ordered by a licensed physician as part of ongoing medical treatment or determined by a licensed physician to be medically necessary is not considered a chemical restraint.
- (e) A nonpublic special education school or program shall not use any form of mechanical restraint on a District of Columbia student.
- (f) A nonpublic special education school or program shall not use any form of prone restraint on a District of Columbia student.

2821 SECLUSION

2821.1 A nonpublic special education school or program shall not use any form of seclusion on a District of Columbia student except in emergency circumstances, as defined in this chapter. Use of seclusion except in cases of emergency shall be grounds for denying or revoking a certificate of approval.

2821.2 A space used for seclusion shall, at a minimum:

- (a) Be free of objects and fixtures with which a student could self-inflict bodily harm;
- (b) Provide school personnel an adequate view of the student from an adjacent area in accordance with this section; and
- (c) Provide adequate lighting, ventilation, and appropriate temperature controls.

2821.3 In the event of seclusion, nonpublic special education school or program personnel shall view a student placed in seclusion at all times, by remaining within sight of the student, consistent with Subsection 2821.5 of this section, and shall provide the student with an explanation of the behavior that resulted in the seclusion and instructions on the behavior required to be released from the seclusion.

- 2821.4 Seclusion shall only be applied by nonpublic special education school or program personnel who are trained in the appropriate use of appropriate techniques supported by written policies and procedures established by the nonpublic school or program and consistent with regulations and guidance issued by OSSE.
- 2821.5 Nonpublic special education school or program personnel shall continuously monitor a student placed in seclusion and speak with the student every ten (10) minutes at minimum. After thirty (30) minutes, the Director, Head of Special Education or other senior personnel shall personally observe the student to assess the need for continued seclusion. No seclusion shall continue longer than one (1) hour.
- 2821.6 If the space used for seclusion has a locking mechanism, it must only be engaged when it is held in position by a person, or if electronically engaged, must automatically release if the building's fire alarm system is activated.

2822 RESTRAINT AND SECLUSION REPORTING AND FOLLOWUP

- 2822.1 If any form of restraint or seclusion is used, the nonpublic special education school or program shall prepare a written report consistent with the requirements of this section.
- 2822.2 A written incident report shall include the following information:
- (a) The student's name;
 - (b) The date of the incident;
 - (c) The beginning and ending times of the incident, and beginning and ending times of actual restraint or seclusion;
 - (d) A description of relevant events leading up to the restraint or seclusion;
 - (e) A description of any interventions used prior to the implementation of restraint or seclusion;
 - (f) A log of events during the restraint, including the restraint technique(s) used;
 - (g) A log of events during the seclusion;
 - (h) A description of any injuries (whether to students, personnel or others) and/or property damage;

- (i) A list and signatures of the school personnel who participated in the implementation, monitoring, and supervision of the restraint or seclusion event; and
- (j) A description of the short-term planned approach to addressing the student's behavior in the future.

2822.3 The written incident report shall be prepared for each individual incident involving a restraint or seclusion, and shall be placed in the student's record within one (1) business day of the incident.

2822.4 A copy of the written incident report shall be sent within one (1) business day of the incident to the student's parent(s), the LEA of enrollment, and any other District of Columbia agency involved in the student's placement.

2822.5 If the restraint or seclusion incident involved physical injury to, or caused by, a student, the nonpublic special education school or program shall report the incident in writing within one (1) business day to the LEA of enrollment and other District of Columbia agency involved in the student's placement, by facsimile or other electronic transmission, and to the parent by the same method, as feasible. If notification to the parent in writing is not possible within one (1) business day, the school or program shall contact the parent by telephone and transmit the written notification within one (1) business day.

2822.6 The IEP team shall meet within ten (10) school days of the incident to consider the need for a FBA and BIP and to discuss non-physical and non-restrictive de-escalation strategies. If the student has a BIP in place, the IEP team shall review and revise as appropriate. If the student is unable or unwilling to attend the IEP team meeting, the nonpublic special education school or program shall meet with the student individually to discuss the incident as appropriate after consulting with the LEA of enrollment.

2823 INCIDENT REPORTING

2823.1 If an incident not involving restraint or seclusion involves physical injury to, or caused by, a student, or a threat of safety to, or caused by, a student, the nonpublic special education school or program shall report the incident in writing within one (1) business day to OSSE, the LEA of enrollment, and any other District of Columbia agency involved in the student's placement, by facsimile or other electronic transmission, and to the parent by the same method, as feasible. If notification to the parent in writing is not possible within one (1) business day, the school or program shall contact the parent by telephone and transmit the written notification within one (1) business day.

2824 EMERGENCY REPORTING

2824.1 In the event of fire or any other form of emergency situation, the nonpublic special education school or program must provide the LEA of enrollment and OSSE with notification in writing within one (1) business day, and status reports thereafter as requested by OSSE.

2825 REPORTING SUSPECTED ABUSE OR NEGLECT

2825.1 A nonpublic special education school or program shall make reports of suspected neglect or abuse as defined in D.C. Official Code § 16-2301(9) and (23), respectively (including compliance with the law on compulsory school attendance) as required by all relevant federal, state, and local law and shall report the suspected abuse or neglect to OSSE no later than fifteen (15) days from the date the school or program first suspects the occurrence.

2826 EXTENDED SCHOOL YEAR AND YEAR-ROUND PROGRAMS

2826.1 To ensure placement decisions are made on an appropriate and individual basis, no student shall be placed in a:

- (a) Nonpublic school or program that requires all students to attend Extended School Year (ESY) programming regardless of need or as a condition of enrollment;
- (b) “Year-round” school unless the student’s IEP team would otherwise require ESY service in a school with a traditional calendar or the team has determined that there is no other school or program with a COA that can implement the student’s IEP; or
- (c) Nonpublic school or program that requires all students to attend programming that is offered outside the time frame of the regular instructional day and is not included in the school or program’s per diem educational rate.

2827 ATTENDANCE AND TRUANCY

2827.1 Consistent with An Act to require the payment of tuition on account of students who attend the public schools of the District of Columbia, and for other purposes, approved September 8, 1960 (74 Stat. 854; D.C. Official Code §§ 38-201, *et seq.* (2012 Repl.)), a nonpublic special education school or program shall require that a District of Columbia student enrolled in its school or program shall attend every regular instructional school day and remain in school until the official closure of the school day, unless otherwise excused.

2827.2 A nonpublic special education school or program shall maintain a policy to allow a student to enter and attend school when the student arrives late for school and

shall record the student's tardiness or partial absence if a student fails to attend school for the entire day.

- 2827.3 A nonpublic special education school or program shall adhere to and maintain policies and procedures in conformance with the attendance and truancy policies and procedures of each LEA of enrollment (except as provided in Subsection 2827.4(b) of this section) and the District of Columbia as set forth in Title 5, Subtitle A, Chapter 21 of the DCMR.
- 2827.4 If a nonpublic special education school or program serves students placed in its school or program from multiple District of Columbia LEAs, it is the responsibility of the nonpublic school or program to have and make available upon request, a written copy of each respective LEA's attendance and truancy policy. In consultation with each LEA of enrollment, the nonpublic school or program shall either:
- (a) Apply the policy of the LEA of enrollment to each student enrolled in that LEA; or
 - (b) Select the attendance policy of one (1) District of Columbia LEA of enrollment to apply to all students attending the nonpublic school or program.
- 2827.5 The designated attendance policy shall meet the minimum requirements of Title 5, Subtitle A, Chapter 21 of the DCMR and each LEA served by the nonpublic school or program.
- 2827.6 A nonpublic special education school or program shall provide written notification of its designated attendance policy to each LEA of enrollment and separately to OSSE in its certificate of approval application or application renewal, or upon request by OSSE.
- 2827.7 The nonpublic special education school or program shall submit to the LEA of enrollment and OSSE the same attendance report that was submitted to OSSE for payment of the school or program's invoice. The attendance report shall accurately reflect each student's attendance for every regular instructional school day, or portion thereof, for the respective billing cycle, identifying excused and unexcused absences in accordance with LEA designated absence codes. All absences shall be presumed to be unexcused unless otherwise marked as excused in an attendance report.
- 2827.8 A nonpublic special education school or program must adhere to the following requirements regarding unexcused absences:
- (a) A nonpublic special education school or program shall notify the LEA of enrollment in writing no later than two (2) instructional school days after

the accrual of five (5) unexcused absences by a District of Columbia student in a marking period or similar time frame so that the student's LEA may take actions including, but not limited to, the steps required by Title 5, Subtitle A, Section 2103 of the DCMR.

- (b) A nonpublic special education school or program shall notify the LEA of enrollment, in writing, not later than two (2) instructional school days after the accrual of ten (10) unexcused absences at any time within the school year. In each such case:
 - (i) The nonpublic special education school or program shall show documented evidence of efforts taken to enforce the applicable attendance policy(s), to reengage the student, to notify the LEA, and to enter notes and upload all documents into the appropriate reporting systems (*e.g.* SEDS).
 - (ii) The nonpublic special education school or program shall consult with the LEA of enrollment regarding whether or not the current placement or location assignment is appropriate and whether an IEP team meeting needs to be convened.
 - (iii) If an IEP Team meeting is convened, the nonpublic special education school or program and the LEA are responsible for convening the meeting as soon as possible to review the student's absences, to make recommendations, as appropriate, with regard to intervention strategies including, but not limited to those required by Title 5, Subtitle A, Section 2103 of the DCMR, and to make a determination regarding the continued appropriateness of the current placement.
- (c) A nonpublic special education school or program shall obtain written authorization from the responsible LEA to hold a placement open and to continue billing for tuition if a student has accrued:
 - (i) Ten (10) unexcused absences at any time during the school year; or
 - (ii) Seven (7) consecutive unexcused absences.
- (d) OSSE shall provide payment in accordance with guidance provided by the LEA, and supported by appropriate documentation
- (e) A nonpublic special education school or provider shall not invoice OSSE and OSSE will not pay related service fees for days a student was unexcused for absence. OSSE will remit payment for related services on days a student is present and services were provided and on days make-up services are provided and appropriately documented;

- (f) Inform OSSE, in the attendance report accompanying the invoice for the billing period in which the student(s) absence(s) occurred, and include a copy of each notice required in this section, advise of the student's status, the student's anticipated date of return, and guidance received from the LEA regarding the students status and next step actions.
- (g) Except as allowed in this chapter, nonpublic special education school or provider shall not invoice OSSE and OSSE will not pay for tuition services for unexcused absences exceeding fourteen (14) consecutive days.
- (h) Nonpublic schools and providers along with LEAs remain responsible for ensuring a free and appropriate public education ("FAPE") is continuously provided and for implementing attendance policies and regulations during the unexcused absence of a student, regardless of OSSE's authority to pay tuition under this section.

2827.9

When a student is absent, excused, for ten (10) or more days, consecutively or within an invoice billing period, a nonpublic special education school or program must adhere to the following requirements:

- (a) Upon notification from any source that a District of Columbia student placed at a nonpublic special education school or program has been temporarily relocated for non-educational reasons (*i.e.*, hospitalization, detainment), the nonpublic special education school or program shall:
 - (i) Notify the LEA of enrollment immediately in writing to disclose or request written information regarding the student's status;
 - (ii) Obtain written authorization from the responsible LEA regarding whether the student is to be withdrawn from the program;
 - (iii) Respond within two (2) business days to a request for records from the alternate facility or the sending LEA for the purpose of providing appropriate academic instruction and related services to the student at the alternate location; and
 - (iv) Inform OSSE, in the attendance report accompanying the invoice for the billing period in which the student(s) absence(s) occurred, of the date on which the change in the student's status took place, the student's current status, the anticipated date of return, and guidance received from the LEA regarding the student's status and next step actions.

- (b) If a nonpublic school or program has documented evidence that the requirements in Subsection 2827.9(a) of this section have been met, OSSE will pay full tuition charges for the first billing period in which the student(s) absence(s) occurred. If a student continues to be absent beyond the first billing period, OSSE will pay one quarter of the daily tuition rate, only, for the next billing period while the student is at the temporary location. Continuation of partial payment, one quarter of the daily tuition rate, beyond two (2) consecutive billing periods, must be requested and submitted to OSSE, in writing, by the LEA of enrollment. OSSE will not pay a nonpublic school or program, beyond two (2) consecutive billing periods when an entity other than the nonpublic school is receiving payment for providing educational services to the student during the time of absence.
- (c) A nonpublic special education school or provider shall not invoice OSSE and OSSE will not pay related service fees for days a student was excused for absence. OSSE will remit payment for related services on days a student is present and services were provided and on days make-up services are provided, and the services appropriately documented.
- (d) OSSE will not pay tuition or any other education fees to a nonpublic school or program during the time of absence for cases involving student detention which includes detention awaiting a court date and/or leading toward incarceration, for any period of time.

2827.10 OSSE, in its discretion, may seek a credit or refund for a payment made to a nonpublic special education school or program if later evidence is discovered that indicates that the payment was not allowable.

2827.11 Unless a detailed written plan has been submitted to and approved by OSSE in advance, no nonpublic special education school or program shall implement a system of rewards or incentives that provides monetary awards to students for attendance.

2827.12 OSSE will not pay for days a nonpublic school or program is closed. A nonpublic school or program may submit an invoice for costs accrued during any make-up days. The invoice must include a statement advising that a make-up day is included and identify the date the make-up day is replacing.

2828 TERMINATION OF SERVICE

2828.1 A nonpublic special education school or program shall not terminate the service of any student, unless and until the LEA of enrollment has been informed, in writing, not less than fifteen (15) business days prior to the proposed date of termination.

2828.2 In the event of emergency circumstances, a nonpublic special education school or program shall not terminate the service of any student, unless and until the LEA of enrollment has been informed in writing, and written notice within one (1) business day of the incident. The LEA must proceed consistent with the requirements in 34 CFR §§ 300.504 and 300.530 through 300.536.

2829 PERSONNEL QUALIFICATIONS

2829.1 A nonpublic special education school or program shall ensure that its organizational structure provides for the effective and efficient operation of the school or program, supervision of the school personnel, and supervision and safety of the students.

2829.2 Each member of the teaching staff shall hold a teaching certification or other applicable credential, as required by the state or district in which the school is located, to the same level as required for teaching staff in public schools of that state or district.

2829.3 Related service providers, whether employed or contracted by the nonpublic special education school or program, shall be appropriately certified, licensed or registered in their professional areas in alignment with requirements from the state or district in which the school is located, to the same level as required for teaching staff in public schools of that state or district.

2829.4 A nonpublic special education school or program shall maintain personnel files including, at minimum, resumes, attendance records, contracts, driver's licenses (or equivalent), and evidence of child protective service and criminal background checks onsite. Access to personnel policies and files shall be immediately available to OSSE upon request, for the purposes of monitoring compliance with the requirements of this chapter.

2829.5 A nonpublic special education school or program shall complete child protective service and criminal background checks on all school personnel, including volunteer staff and independent contractors who provide services on behalf of the school or program, consistent with the District of Columbia requirements or the requirements of the State in which the nonpublic school or program is located.

2830 POLICIES AND PROCEDURES

2830.1 A nonpublic special education school or program shall maintain on file, at minimum, written policies and procedures that address the following areas:

- (a) Mission statement;

- (b) Positive behavior support policy statement and school-wide positive behavior plan, including a school-wide crisis plan and disciplinary guidelines;
- (c) Emergency behavioral interventions, including use of seclusion and restraint as proscribed in this chapter;
- (d) Participation of all District of Columbia students in state-wide assessments;
- (e) Opportunities for enrolled students to interact maximally with their non-disabled peers during such time as they are enrolled in the nonpublic special education school or program;
- (f) Reintegration plan for return to a less restrictive environment;
- (g) Postsecondary transition services and transition planning, as appropriate;
- (h) Attendance and truancy;
- (i) Records management and confidentiality of student records;
- (j) Process for a student or parent to make a complaint to the nonpublic special education school or program about the services the student is receiving, including how to access OSSE's state complaint process;
- (k) Employee policies including position descriptions, staff evaluation policies, staff discipline policies (including suspensions and dismissals), procedures for handling complaints by staff, and a statement of equal employment/educational opportunities in regard to race, color, creed, religion, national origin, sex, sexual orientation and disability;
- (l) A plan for meaningful participation by the parent, and other individuals authorized by the parent, in all aspects of the IEP process including, without limitation, eligibility determination and participation in IEP team meetings;
- (m) Supervision of students;
- (n) A plan for serving students with limited English proficiency;
- (o) Admissions and termination criteria;
- (p) Reporting of suspected child abuse or neglect;

- (q) Timely IEP implementation, including conducting and participating in IEP team meetings;
- (r) Conducting evaluations and reevaluations;
- (s) Professional development plan which ensures adequate staff education on policies and procedures;
- (t) Staff-student interactions within, outside school, including face-to-face and electronic communication and social media.

2831**PROFESSIONAL DEVELOPMENT AND TRAINING**

2831.1

A nonpublic special education school or program shall conduct personnel training at least once annually, regarding:

- (a) Evidence-based interventions;
- (b) Alignment of curriculum to state learning and graduation standards, including District Learning Standards;
- (c) Confidentiality of student information, including FERPA requirements;
- (d) Procedural safeguards for students and parents;
- (e) Positive behavior support;
- (f) Restraints/seclusion policies in accordance with this chapter;
- (g) Reporting of suspected abuse or neglect;
- (h) Emergency procedures including evacuation and fire drills;
- (i) Truancy; and
- (j) Equal employment opportunities.

2832**INFORMATION FOR STUDENTS**

2832.1

At least annually, a nonpublic special education school or program shall provide each student with complete and up to date information about its program, including at minimum its academic policies and school calendar, program contact information, IEP process, policies on behavior management, student rights and privileges, and the process for making a confidential complaint about the services or treatment he or she is receiving at the school or program.

2833 INFORMATION FOR PARENTS

2833.1 At least annually, a nonpublic special education school or program shall provide every parent with complete and up to date information about its program, including at minimum its academic policies and school calendar, program contact information, IEP process, policies on behavior management and emergency behavioral interventions, including the use of seclusion and restraint, student rights and privileges and the process for a parent to make a complaint about the services or treatment a student is receiving at the school or program and, for residential placements, school travel policies.

2833.2 In addition to the information set forth in the above subsection, the nonpublic special education school or program shall provide information to all parents regarding monitoring by OSSE, including the fact that students may be asked to participate in interviews or other fact-gathering activities with OSSE representatives.

2834 MEDICAID REIMBURSEMENT

2834.1 A nonpublic special education school or program shall adhere to all federal and District of Columbia laws and regulations governing Medicaid reimbursable services, including, but not limited to, documentation of all instances of IEP health-related services delivered to District of Columbia students.

2834.2 (a) A nonpublic special education school, program or related service provider shall keep organized and confidential records that detail client specific information regarding all specific Medicaid reimbursable services provided for each individual recipient of services and retain those records for review. All such documentation shall include:

- (i) The student's complete IEP (with relevant provider signatures as required to meet prescription/referral/recommendation requirements);
- (ii) All evaluation reports (with relevant provider signatures as required to meet prescription/referral recommendation requirements);
- (iii) Service tracking documentation;
- (iv) Progress notes;
- (v) Billing records; and
- (vi) Practitioner credentials for service providers. Services must be provided by licensed or qualified practitioners. In certain cases, supervisory requirements may apply.

- (b) The following data elements are required as part of the service documentation:
- (i) School District Name/Provider Number: Name of the school district where services are provided and the provider number used to bill the Medicaid program;
 - (ii) Student Name: Student's complete legal name;
 - (iii) Date of Birth: Student's complete date of birth;
 - (iv) Student Medicaid Number: Student's Medicaid identification number;
 - (v) Date: The date a Medicaid service is provided to a student;
 - (vi) Type of Medicaid approved service provided;
 - (vii) Student's progress toward specified clinical objectives: Dated and signed notes that document the degree of measureable progress toward student treatment goals and objectives. These notes should be a one to two (1-2) sentence summary related to the specific therapy session;
 - (viii) Activity/Procedure Note: A written description of the service provided to the student. This must document the extent and duration of the medical service provided;
 - (ix) Service Setting (Group/Individual): Indicate if the student received services on an individual basis or in a group setting;
 - (x) Service Time: The quantity of service provided to the student should be recorded as an amount of time (example: twenty (20) minutes). This can capture the cumulative time the provider spent delivering services over the course of the day;
 - (xi) Name and clinical discipline of service provider;
 - (xii) Signatures: The signature of the medical professional providing services must comply with generally accepted standards for record keeping within the applicable provider type as they may be found in laws and regulations of the relevant board of registration. Providers whose services require supervision must have documentation cosigned in accordance with the applicable standards for the provider type;

- (xiii) Attendance Report: An attendance report including specific days of attendance and absence for each student; and
- (xiv) Annual Parental Medicaid Consent forms: Obtain parental consents before the first (1st) time the student's or parent's Medicaid benefits are going to be accessed and then an annual parent notification thereafter.

- 2834.3 The frequency, duration and scope of services shall be specified in the student's IEP consistent with the IDEA and its implementing regulations.
- 2834.4 As requested by OSSE, a nonpublic special education school or program shall enter into a contract confirming its rates for Medicaid purposes and consistent with the Placement Act requirements.
- 2834.5 When considering residential placements, the LEA of enrollment shall give student placement preference to facilities that are Medicaid eligible and qualify with regard to providing services specified by an IEP.
- 2834.6 All progress note documentation must be completed in SEDS within five (5) business days of a student-level transactional event.

2835 ANNUAL CERTIFICATE OF COMPLIANCE

- 2835.1 Pursuant to D.C. Official Code § 38-2561.08(d) (2012 Repl.), a nonpublic special education school or program shall certify compliance with this chapter not less than forty-five (45) calendar days prior to the start of the school or program's regular school year, using such forms as shall be provided by OSSE.

2836 DISCLOSURE OF INFORMATION

- 2836.1 A nonpublic special education school or program shall make immediately available to OSSE and to the LEA of enrollment, on request, information on all aspects of the school's program(s), staff credentials, criminal background checks, child protective services checks, certification by agencies other than OSSE, information regarding any complaints made, health and safety information, the individual records of District of Columbia students, including without limitation, attendance data and incident reports.
- 2836.2 A nonpublic special education school or program shall make available to OSSE, any other information that OSSE may reasonably require in exercising its duties as the SEA.
- 2836.3 The following documents shall be maintained onsite at the school and immediately made available for review upon request:

- (a) Current certificate of approval by the District of Columbia and all other relevant certifications and licensing bodies;
- (b) Documents granting authority to operate the school, including documents that fully identify ownership, and, as applicable, the names of officers, boards, charters, partnership agreements, articles of organization, and by-laws;
- (c) Copies of all required professional certifications and licenses of all school personnel; and
- (d) Evidence of criminal background and child protective services checks.

2837 MONITORING

2837.1 Pursuant to D.C. Official Code § 38-2561.09 (2012 Repl.), OSSE shall schedule monitoring visits to each nonpublic special education school or program at least once during the validity of each period covered by a certificate of approval, or once every three (3) years, to verify compliance with this chapter, federal and local law. Prior to a scheduled monitoring visit, a nonpublic special education school or program shall inform all parents of enrolled District of Columbia students that a scheduled monitoring visit shall occur.

2837.2 Representatives of OSSE may make unannounced visits to a nonpublic special education school or program to observe program implementation, review student records, and conduct interviews with students and staff. OSSE, as the District of Columbia's SEA, is entitled to immediate access to all student records for monitoring and investigative purposes and shall maintain their confidentiality as required by law. The nonpublic special education school or program shall cooperate in full with any requests for documentation, file review, interviews and access to the facility during an unannounced visit. OSSE may interview students on site at a school or program without school representatives being present. OSSE shall make its requests in a manner least intrusive to the delivery of instruction and services to students.

2837.3 OSSE shall issue to the nonpublic special education school or program a monitoring report at least once in every period of validity for a certificate of approval, which shall include any findings of noncompliance with D.C. Official Code § 38-2561 (2012 Repl.) and this chapter. Any finding of noncompliance that constitutes a violation of D.C. Official Code § 38-2561.11(a) (2012 Repl.) or this chapter shall be clearly documented.

2838 PROBATION FOR NONCOMPLIANCE

2838.1 OSSE may place a nonpublic special education school or program on probationary approval status at any time, when OSSE determines that the school

or program is not in compliance with the Placement Act and the standards of this chapter. OSSE shall notify the school or program of the areas of noncompliance. The period of probation shall not exceed six (6) months.

- 2838.2 A nonpublic special education school or program in probationary approval status shall complete and document in writing within timelines specified by OSSE, the efforts taken by the school to come into all identified areas of noncompliance. If, based on the evidence, OSSE determines that the nonpublic special education school or program complies with the standards of this chapter, OSSE shall reinstate the school or program's certificate of approval with full approval status. If the noncompliance is not corrected within the timeframe established by OSSE, OSSE shall take steps to revoke, refuse to renew, or suspend the certificate of approval.
- 2838.3 A nonpublic special education school or program with a probationary certificate of approval may not accept or enroll any additional students from the District of Columbia until OSSE issues a certificate of approval with full approval status, or a student placement at the school or program is ordered by a court of law or a hearing officer decision pursuant to 34 C.F.R. § 300.513.

2839 DENIAL, REVOCATION, REFUSAL TO RENEW, OR SUSPENSION

- 2839.1 In the event OSSE determines a nonpublic special education school or program does not comply with or has violated D.C. Official Code § 38-2561.11(a) (2012 Repl.) or this chapter, OSSE may in its discretion take action to deny, revoke, refuse to renew, or suspend the certificate of approval.
- 2839.2 Pursuant to D.C. Official Code § 38-2561.11(b) (2012 Repl.), a written notification of an intent to deny, revoke, refuse to renew, or suspend a certificate of approval shall specify the violations or failure to meet the requirements of D.C. Official Code § 38-2561.11(a) (2012 Repl.) or this chapter, include a statement of all the facts upon which OSSE bases its notification of intent, as well as notice of an opportunity to be heard. The written notification shall be accompanied by copies of all documentation supporting the facts upon which the notification is based, as appropriate. In the event a nonpublic special education school or program does not timely request a hearing under Title 5, Subtitle A, Section 2840 of the DCMR and the Placement Act, OSSE's intended action shall be final and take effect. OSSE shall give notice to the school or program of the final action.

2840 CERTIFICATE OF APPROVAL HEARING PROCESS

- 2840.1 A nonpublic special education school or program may request an evidentiary hearing to review a notification of a violation and intent to deny, revoke, refuse to renew, or suspend the school or program's certificate of approval under D.C. Official Code § 38-2561.11(a) (2012 Repl.).

- 2840.2 A nonpublic special education school or program shall request such hearing in writing, no later than thirty (30) days after the receipt date of a written notification of violation and intent to take action regarding the school or program's noncompliance. A hearing request involving a nonpublic special education school or program's aversive intervention policy or practice shall be submitted to OSSE in writing not later than ten (10) days after the receipt date of the written notification of noncompliance.
- 2840.3 The hearing shall be conducted by an independent panel (panel) composed of three (3) persons selected by the State Superintendent of Education.
- 2840.4 The panel shall not contain any person who has participated in the determination being reviewed.
- 2840.5 The nonpublic special education school or program's written request for a hearing shall include the following:
- (a) A concise statement of facts regarding each specific violation, finding, or action of which the school or program seeks review;
 - (b) The specific basis for opposing each violation, finding or action subject to review, including the identification of any specific document submitted as part of the record to support the nonpublic special education school or program's position;
 - (c) The specific relief requested;
 - (d) The statutory and factual justification for the relief requested;
 - (e) Two (2) copies of all documentary evidence and an index of the documents for consideration by the panel; and
 - (f) A request for an oral presentation consistent with Section A-2843.10 if the school or program seeks an opportunity for an oral presentation at the hearing.
- 2840.6 OSSE may, in its discretion, respond in writing to the school or program's submissions with regard to the hearing, not later than five (5) days prior to the hearing date.
- 2840.7 The hearing shall be held not later than thirty (30) days after the receipt date of the written request for a hearing, except that a hearing shall be held within fifteen (15) days after the receipt date of a request for a hearing in a case involving aversive intervention policies or practice.

- 2840.8 The nonpublic special education school or program shall continue to provide special education and related services to a District of Columbia student consistent with a student's IEP; and may submit invoices for such services consistent with this chapter and a final decision by the panel.
- 2840.9 The written decision of the panel shall be issued within ten (10) days after a hearing is concluded.
- 2840.10 The decision of the panel shall be the final agency action.
- 2840.11 OSSE shall publish the final decision issued by the panel, and take appropriate action in conformance with the final decision, including specific notification to the nonpublic special education school or program, and other relevant parties as OSSE deems appropriate including LEAs, and other government officials within or outside the District of Columbia.

2341 ACTION FOLLOWING CHANGE IN COA STATUS

- 2841.1 If OSSE denies an application for, refuses to renew, suspends, or revokes a certificate of approval for a nonpublic special education school or program subject to this chapter, the following shall occur:
- (a) OSSE shall provide written notification of its decision to any sending local education agency (LEA of enrollment) with children in the nonpublic school or program;
 - (b) Each LEA of enrollment shall notify the parent that the nonpublic school or program has failed to qualify for a certificate of approval;
 - (c) The IEP team shall schedule an IEP Team meeting to determine an appropriate placement for the student; and
 - (d) OSSE shall issue a location assignment upon receiving notification from the LEA of enrollment that a student continues to require a placement in a nonpublic school or program placement.
- 2841.2 The denial of an application, refusal to renew, suspension, or revocation of a certificate does not invalidate a student placement by court order or hearing officer decision (HOD). The LEA of enrollment shall convene an IEP team meeting to determine if the placement is appropriate and, if necessary, seek a modification of the court order or HOD.

2842 RATES – GENERAL

- 2842.1 OSSE shall establish and publish on an annual basis, or more frequently as needed, maximum rates to be paid for tuition and related services to nonpublic

special education schools and programs providing special education and related services to students funded by the District of Columbia.

- 2842.2 On an annual basis, all nonpublic special education schools and programs shall submit documentation in support of their requested rates to OSSE for review, for each school or program location. OSSE shall issue an annual rate confirmation to each nonpublic school or program location, and the right to rate reconsideration pursuant to Title 5, Subtitle A, Section 2850 of the DCMR. A nonpublic special education school or program must obtain an OSSE rate confirmation, for each school or program location, prior to service provision or invoicing.
- 2842.3 Nonpublic special education schools or programs must seek a rate confirmation for all services not already approved by OSSE before the services are rendered or invoiced.
- 2842.4 A nonpublic special education school or program shall not invoice OSSE in excess of its approved rates as authorized in the annual rate confirmation.
- 2842.5 Nothing in this chapter shall prohibit OSSE from:
- (a) Authorizing and accepting a rate higher than the rates set by this chapter in situations in which there is no other appropriate placement for an individual child;
 - (b) Entering into contracts with nonpublic special education schools or programs for competitive rates or from recognizing competitive rates negotiated by District of Columbia LEAs or other District of Columbia agencies; or
 - (c) Paying for all IDEA services ordered in an HOD or court order resulting from a due process complaint filed under IDEA.
- 2842.6 A nonpublic school or program shall not submit for approval, or charge the District of Columbia at, a rate higher than a rate charged to other jurisdictions or to the private-paying general public for the same or a comparable service.
- 2842.7 A nonpublic special education school or program shall provide, upon request, a copy of all tuition and fee schedules provided to or charged to the private-paying general public.
- 2842.8 A nonpublic special education school or program shall not require the parents of a student enrolled in its school or program and funded by the District of Columbia, to sign a contract or agreement making the parents responsible for tuition and related services costs.

2843 NONPUBLIC SPECIAL EDUCATION SCHOOL OR PROGRAM RATES ESTABLISHED IN ANOTHER STATE

2843.1 Pursuant to the following sections, a nonpublic special education school or program may request that OSSE recognize a rate or set of rates be confirmed for a specific school location, under its operation, which has been approved by another state, or political subdivision within a state, based upon a rate-setting methodology OSSE deems to be reasonable. If the rate set by the state or political subdivision applies to more than one (1) school location, OSSE's acceptance of the rate will be applied to each individual location approved and listed within the provided state approval document(s), only. School locations not listed and approved within the provided document(s) will not receive the state approved rate. If another jurisdiction's rate-setting methodology results in a set of rates for a given school or program (for example, a per diem tuition rate and/or related service(s) rates) the set of rates shall be recognized by OSSE in total.

2843.2 A nonpublic special education school or program shall submit to OSSE documentation that supports the rate(s) established in another state in an appropriate electronic format, annually or within five (5) business days after the date a student is enrolled at the nonpublic special education school or program. The documentation submitted to OSSE shall include the following information:

- (a) A complete set of all documents submitted to the rate-setting state or political subdivision;
- (b) Copies of all communications and notices received from the rate-setting state, or political subdivision within a state, describing all limitations to the rates including, without limitation, the effective dates;
- (c) Information relating to bundling related service(s) in the per diem education rate; and
- (d) The school year and total number of regular school days in the year for which the rate(s) will be paid.

2844 DAY AND RESIDENTIAL PROGRAM TUITION RATE ESTABLISHED BY THE DISTRICT

2844.1 Effective July 1, 2011, the maximum annual per student tuition rate to be paid by the District of Columbia to a nonpublic special education school or program shall be based on the funding established by the Uniform Per Student Funding Formula ("UPSFF") for students with disabilities enrolled in a District of Columbia public school.

2844.2 The maximum per diem tuition rates for non-extended school year (ESY) school days shall be derived by dividing the maximum annual per student tuition rate by one hundred eighty (180).

2844.3 If the District’s annual budget for a next fiscal year (which begins on October 1) has not been approved by Congress by October 1, the most current OSSE Rate Confirmation shall remain in effect until such time as the District’s annual budget has been approved by Congress.

2844.4 If the final version of the UPSFF enacted into law for a fiscal year differs from the UPSFF submitted to the U.S. Congress, OSSE shall reconcile payments consistent with the final UPSFF. Within sixty (60) business days after the effective date of the final UPSFF, the amounts paid to a nonpublic special education school or program or related service provider shall be reconciled in the following manner:

- (a) OSSE will communicate the new rate and calculate the change;
- (b) OSSE will inform the nonpublic school of the reconciliation method and next step actions.

2845 MAXIMUM ANNUAL AND PER DIEM PER STUDENT TUITION RATES

2845.1 The Maximum Annual Per Student Tuition Rate to be paid by the District of Columbia for a school year of one hundred eighty (180) regular instructional days shall be calculated according to the following formula:

$$+ \frac{\text{UPSFF Special Education Schools per Pupil Allocation} + \text{UPSFF Level 4: Special Education per Pupil Supplemental}}{\text{Maximum Annual Per Student Tuition Rate}}$$

2845.2 The Maximum Per Diem Tuition Rate to be paid by the District of Columbia for regular instructional days shall be calculated according to the following formula: Maximum Annual Per-Student Tuition Rate divided by one hundred eighty (180) days.

2845.3 Unless the requirements of paragraph (a) of this subsection are met, a school day, excluding Extended School Year (“ESY”) programming that does not meet the six (6) hour minimum instructional school day requirement, shall be billed on a pro rata hourly basis based on each school or program’s per diem tuition rate as established in this chapter. OSSE shall apply a debit to the account of or seek a refund from any nonpublic special education school or program found to have overcharged OSSE in violation of this section.

- (a) A nonpublic special education school or program that seeks to incorporate a school day that does not meet the six (6) hour minimum into the academic calendar shall submit a written verification that other

instructional days have been lengthened in order to ensure that the average number of instructional hours over the course of the school calendar meets or exceeds six (6) hours per day. This includes, but is not limited to, a routine early release day held in order to provide documented professional development or other mandatory faculty co-planning. A nonpublic special education school or program shall provide written notification of such designation to each LEA and separately to OSSE through the following methods: (1) in the COA application or application renewal; (2) in the COA Annual Certificate of Compliance; or (3) upon request by the OSSE Nonpublic Payment Unit (“NPU”).

2845.4 The Maximum Per Diem Tuition Rate does not apply to homebound or visiting home instruction as described in this chapter. Homebound or visiting home instruction must be reviewed and approved by OSSE prior to implementation and invoice submission.

2845.5 The maximum annual and maximum per diem tuition rates shall be published annually on the OSSE website.

2846 RATE SETTING – PER DIEM TUITION RATES FOR NONPUBLIC SPECIAL EDUCATION SCHOOLS AND PROGRAMS

2846.1 Except as described in Subsections 2846.2 and 2846.3 of this section, the per diem tuition rate to be paid by the District of Columbia to a nonpublic special education school or program shall be the lowest of the:

- (a) Maximum Per Diem Tuition Rate as calculated consistent with this chapter;
- (b) Per diem tuition rate the nonpublic school or program charges to the private-paying general public, derived by dividing the total annual tuition by the actual number of school days if necessary; or
- (c) Per diem tuition rate set by another state, or political subdivision within a state, applicable to the school location(s) listed in the approval document, as the result of a rate-setting methodology that has been deemed to be reasonable by OSSE.

2846.2 OSSE shall accept the per diem tuition rate set by the state or political subdivision within the state in which the school or program is located when the per diem tuition rate is derived from a standardized rate-setting methodology deemed reasonable by OSSE. If the rate set by the state or political subdivision applies to more than one (1) school location, OSSE’s acceptance of the rates will be applied to each individual school location approved and listed within the provided state approval document(s). School locations not listed and approved within the provided documents will not receive the state approved rates.

2846.3 OSSE may accept a rate set by a state or political subdivision within a state other than the state in which the school or program is located when the per diem tuition rate is derived from a standardized rate-setting methodology deemed reasonable by OSSE. If the rate set by the state or political subdivision applies to more than one (1) school location, OSSE's acceptance of the rates will be applied to each individual school location approved and listed within the provided state approval document(s), only. School locations not listed and approved within the provided document(s) will not receive the state approved rates.

2846.4 If the state approved rate(s) is higher than the Maximum Per Diem Rate as calculated in this chapter and the state approved rate is based upon a bundling of tuition and related services, as permitted by that state, the nonpublic school or program shall be responsible for communicating such to OSSE, and OSSE shall confirm rates in accordance with the states documentation of services to be included in each approved rate(s).

2847 EXTENDED SCHOOL YEAR RATES

2847.1 Rates for extended school year (ESY) services, as defined by 34 C.F.R. § 300.106, shall be prorated hourly, calculated according to this chapter, and based on a prorated instructional day.

2847.2 Each nonpublic school or program shall submit an ESY schedule documenting the amount of daily instruction provided in order for OSSE to approve the ESY rate. Such documentation shall be received, annually, no less than sixty (60) sixty days before the first date of expected ESY invoicing.

2847.3 No invoice for ESY services for a student shall be submitted to OSSE prior to the date OSSE has approved an ESY rate.

2847.4 No invoice for ESY services for a student shall be submitted to OSSE unless eligibility and certification for ESY has been documented in the student's IEP and in accordance with OSSE ESY policy.

2847.5 The first billing date for a student's ESY services shall be the first (1st) day of attendance, in accordance with the student's IEP, at the designated ESY location.

2848 RATE SETTING – RELATED SERVICES

2848.1 The Baseline Hourly Rate used to calculate the Maximum Hourly Rate for each of the following related services, as defined by 34 C.F.R. § 300.34(2010), including the Maximum Cost for evaluation and screening services, shall be the mean hourly rate from the United States Department of Labor Bureau of Labor Statistics ("BLS") Metropolitan Area Occupational Employment and Wage Estimates for the Washington-Arlington-Alexandria, DC-VA-MD-WV

Metropolitan Division that corresponds to each of the following Standard Occupational Classification (“SOC”) system codes:

- (a) Audiology services, as referred to in 34 C.F.R. § 300.34(c)(1)(2010) – SOC code 29-1181(Audiologist);
- (b) Counseling services, as referred to in 34 C.F.R. §300.34(c)(2)(2010) and, for Psychological services provided by a Psychologist only, 34 C.F.R. § 300.34(c)(10):
 - (1) Behavioral supports provided by a Licensed Mental Health Counselor – SOC code 21- 1014 (Mental Health Counselors);
 - (2) Behavioral supports provided by a Licensed Social Worker – SOC code 21-1021 (Child, Family, and School Social Workers);
 - (3) Behavioral supports provided by a Psychologist – SOC code 19-3031 (Clinical, Counseling, and School Psychologist); or
 - (4) Behavioral supports provided by a Psychiatrist – SOC code 29-1066 (Psychiatrists);
- (c) Occupational Therapy services, as referred to in 34 C.F.R. § 300.34(c)(6)(2010) – SOC code 29-1122 (Occupational Therapists);
- (d) Physical Therapy services, as referred to in 34 C.F.R. § 300.34(c)(9)(2010) – SOC code 29-1123 (Physical Therapists);
- (e) Speech-Language Pathology services, as referred to in 34 C.F.R. § 300.34(c)(15)(2010) – SOC code 29-1127 (Speech-Language Pathologists);
- (f) Nutrition Services, as referred to in 42 C.F.R. § 440.60 (a) - SOC code 29-1031;
- (g) Orientation and Mobility, as referred to in 42 C.F.R. § 440.130(d);
- (h) Personal Care, as referred to in 42 C.F.R. § 440.167 - 39-9021; and
- (i) Skilled Nursing, as referred to in 42 C.F.R. § 440.60 - SOC code 29-9799

2848.2

Specialized transportation rates will be reimbursed in accordance with rates established by the Department of Health Care Finance (“DHCF”).

Except as provided in (a) and (b) below, the Maximum Hourly Rate for individual related services shall be two and one half (2.5) times the Baseline Hourly

Rate. Nonpublic special education schools and programs may not charge OSSE more than the rate charged to any private payer for the same related service. Providers may be required to provide copies of credentials to support any given rate.

- (a) For Counseling Services provided by a Psychologist the Maximum Hourly Rate shall be two and three-quarters (2.75) times the Baseline Hourly Rate.
- (b) For Occupational Therapy Services the Maximum Hourly Rate shall be two and three-quarters (2.75) times the Baseline Hourly Rate.

2848.3 A nonpublic special education school, program, evaluator, or related service provider shall obtain from OSSE prior written approval for related service rates that are not provided for in this section. OSSE shall not pay for such a related service unless the rate is specifically approved by OSSE as part of the most recent OSSE rate confirmation process or through a separate, OSSE, rate review process.

- (a) Unless otherwise set by the District's Medicaid Program for PRTFs or an OSSE confirmed state rate approval, the maximum rate a related service provided to a student enrolled in a nonpublic special education day or residential school or program shall be aligned to the United States Department of Labor Bureau of Labor Statistics ("BLS") Metropolitan Area Occupational Employment and Wage Estimates for the geographic area in which the day or residential program is located.

2848.4 If the rate of another state or political subdivision has been accepted by OSSE under this chapter is a bundled tuition rate that incorporates related service(s), the nonpublic school or program may not invoice OSSE separately for that service up to the number of bundled hours. OSSE shall apply a debit to the account of or seek a refund from a nonpublic school or program found to have charged OSSE in violation of this section.

2848.5 *Group Rates for Related Services.* The per-student hourly rate for each student in a group shall be based on the following formula:

- (a) Group Size of 2 = (Individual Related Service Rate x 1.85) ÷ 2;
- (b) Group Size of 3 = (Individual Related Service Rate x 1.95) ÷ 3;
- (c) Group Size of 4 = (Individual Related Service Rate x 2.00) ÷ 4; or
- (d) Group Size of 5 or more = (Individual Related Service Rate x 2.00) ÷ 5.

2848.6 *Aides.* For IEP-required One-to-One (1 to 1) aides, the baseline annual salary used to calculate the maximum hourly rate will be the mean annual salary from

the United States Department of Labor Bureau of Labor Statistics (BLS) Metropolitan Area Occupational Employment and Wage Estimates for the Washington-Arlington-Alexandria, DC-VA-MD-WV Metropolitan Division that corresponds to occupational code 25-9041 (Teacher Assistants). The Maximum Hourly Rate for Aides shall be the mean annual salary divided by one hundred eighty (180) school days divided by six (6) instructional hours.

2849 RATE SETTING – EVALUATIONS AND SCREENINGS

2849.1 The Maximum Evaluation and Screening Cost to be paid for each of the following service categories will be calculated by multiplying the corresponding individual related service rate as described in Section A-2848 by the maximum number of hours permitted to be billed for each evaluation or screening, as provided in the following chart:

Evaluation or Screening	Relevant DHCf Procedure Code Description(s)	Maximum Number of Hours	Corresponding Related Service Rate
(a) Audiology	Evaluation of speech, language, voice, communication, and/or aural rehabilitation status	4	Audiology, A-2848.1(a)
(b) Comprehensive Psychological	Psychological testing (includes psychodiagnostic assessment of emotionality, intellectual abilities, personality and psychopathology, for example, Minnesota Multiphasic Personality Inventory, Rorschach, Wechsler Adult Intelligence Scale (WAIS), per hour of the psychologist’s or physician’s time, both face-to-face time administering tests to the patient and time interpreting these test results and preparing the report	13	Counseling by a Psychologist, A-2848.1(b)(3)
(c) Neuropsychological Testing Battery	Neuropsychological testing battery (for example, Halstead-Reitan, Luria, WAIS-R with interpretation and report	10	Counseling by a Psychologist, A-2848.1(b)(3)
(d) Neurobehavioral Status Exam	Clinical assessment of thinking, reasoning and judgment (<i>e.g.</i> acquired knowledge, attention, language, memory, planning and problem solving, and visual-spatial abilities)	10 (note: Neuropsychological evaluations are comprised	Counseling by a Psychologist, A-2848.1(b)(3)

		of (c) and (d))	
(e) Occupational Therapy	Occupational therapy evaluation or screening, including re-evaluations	6	Occupational Therapy, A-2848.1(c)
(f) Psychiatric	Psychiatric diagnostic interview examination	10	Counseling by a Psychiatrist, A-2848.1(b)(4)
(g) Physical Therapy	Physical therapy evaluation or re-evaluation	4	Physical Therapy, A-2848.1(d)
(h) Speech-Language	Evaluation or screening of speech, language, voice, communication, auditory processing, and/or aural rehabilitation status	8	Speech-Language Pathology, A-2848.1(e)
(i) Nutrition Services	Services and Screenings relative to a medical condition	6	Nutrition Services, A-2848.1(f)
(j) Orientation and Mobility	Services and Screening for blind or visually impaired children	1	Orientation and mobility A-2848.1(g)
(k) Personal Care	Services and Screenings provided by Personal Care Aide	6	Personal Care A-2848.1(h)
(l) Skilled Nursing	Services and Screenings for administration of physician ordered medications or treatments	4	Skilled Nursing A-2848.1(i)

2849.2 A nonpublic special education school, program, evaluator, or related service provider shall obtain from OSSE prior written approval for an evaluation or screening rate that is not provided for in this section. OSSE shall not pay for such a related service unless the rate is specifically approved by OSSE as part of the most recent OSSE rate confirmation process or through a separate, OSSE approved, rate review process.

- (a) Unless otherwise set by the District’s Medicaid Program for PRTFs or an OSSE confirmed state rate approval, the Maximum Evaluation Cost for an evaluation provided to a student enrolled in a nonpublic special education day or residential school or program shall be aligned to the United States Department of Labor Bureau of Labor Statistics (BLS) Metropolitan Area Occupational Employment and Wage Estimates for the Washington-Arlington-Alexandria, DC-VA-MD-WV Metropolitan Division and multiplied by the permitted number of hours.

2850 RATE-SETTING – ADMINISTRATION AND APPEALS

- 2850.1 OSSE shall be responsible for processing payments for services provided to students attending nonpublic special education schools or programs paid for by the District of Columbia and shall:
- (a) Issue written guidance with regard to OSSE's payment policies and procedures;
 - (b) Issue written guidance for dispute resolution with regard to payments made under the Placement Act and this chapter;
 - (c) Publish rates and payment related guidance on the OSSE website; and
 - (d) Publish the components of the annual rate calculation formula on the OSSE website.
- 2850.2 A nonpublic special education school or program may appeal a rate established by OSSE under the Placement Act in accordance with the rate reconsideration review process before a rate reconsideration panel established by the Placement Act.
- 2850.3 The rate established by OSSE shall remain in effect pending a final decision of the rate reconsideration panel.
- 2850.4 A rate shall be eligible for reconsideration only for matters that relate to the ability of the nonpublic special education school or program to meet the requirements of an IEP for a student placed by a District government agency. In order to be heard and considered, a nonpublic special education school or program's written request for reconsideration of a rate established under this chapter shall:
- (a) Be filed with OSSE within thirty (30) calendar days after the school or program receives notification of the rate established by OSSE under this chapter;
 - (b) State with specificity the relief requested;
 - (c) Include documented data and analysis to justify the request for a specific rate and an explanation why the special education services required by the District student's IEP could not be met at the established rate; and
 - (d) Provide any other information deemed appropriate by the rate reconsideration panel to allow an analysis of the claim.
- 2850.5 The rate reconsideration panel may in its discretion review individual exceptions for a student the panel determines has unique or highly specialized needs that cannot be properly addressed and funded through the aggregate rate. In the case

where reconsideration is being requested for an individual exception to an aggregate rate, the requesting party shall:

- (a) Justify with specificity the necessity to pay for services at a rate in excess of an established rate;
- (b) Demonstrate the existence of the student's unique or highly specialized needs;
- (c) Include documented data and analysis to justify the request for a specific rate and an explanation why the special education services required by the District student's IEP could not be met at the established rate; and
- (d) Provide any other information deemed appropriate by the rate reconsideration panel to allow an analysis of the claim.

2850.6 Upon receipt of a timely request for reconsideration that conforms with the requirements of the Placement Act and this chapter, OSSE shall convene and provide administrative support to the rate reconsideration panel in conformance with the Placement Act. OSSE shall establish guidance with regard to the panel hearing process and member conduct, including:

- (a) Confidentiality requirements;
- (b) Member duties, responsibilities, and prohibitions against representations or public statements related to panel membership;
- (c) The rate reconsideration hearing procedures, including a requirement to issue a panel decision within forty-five (45) days after the date of the receipt of a request for reconsideration; and
- (d) Specifications regarding the official record.

2850.7 The rate reconsideration panel may require a nonpublic special education school or program requesting reconsideration of a rate to provide the panel with further documentary evidence required to make a decision and may establish deadlines for the submission of such evidence.

2899 DEFINITIONS

Any term used in this chapter that is not otherwise defined herein, has the same meaning as in D.C. Official Code §§ 38-2561 *et seq.* (2012 Repl.) and the IDEA 20 U.S.C. §§ 1400 *et seq.*

“Americans with Disabilities Act” means the Americans with Disabilities Act of 1990, approved July 26, 1990 (Pub.L. 101-336, 104 Stat 327, as amended; 42 U.S.C. §§ 12101 *et seq.*).

“**Abuse**” shall have the meaning provided that term in D.C. Official Code § 16-2301 (2012 Repl.).

“**Aversive intervention**” shall have the meaning provided that term in D.C. Official Code § 38-2561.01(1) (2012 Repl.).

“**Behavior Intervention Plan or BIP**” means a written plan that describes how an educational setting will be changed to improve the behavioral success of a student; the teaching that will occur to give the student alternative ways of behaving; the consequences that will be provided to (a) encourage positive behavior, (b) limit inadvertent reward of problem behavior, and (c) where appropriate, discourage problem behavior; and procedures for ongoing assessment to determine if the BIP is being implemented correctly and if implementation is resulting in benefits for the student.

“**Bundled or Package Rate Methodology**” means use of a single invoice for groups of services to students with disabilities without documentation of the actual delivery of services or their costs on an individual per student basis, and which therefore does not qualify for Medicaid reimbursement under federal guidance.

“**Days**” means calendar days unless otherwise noted.

“**Emergency**” means a temporary and non-recurring circumstance in which intervention is reasonably believed to be necessary to protect a student or other person from imminent, serious physical harm. Property destruction, disruption of school order, or failure of a student to follow the directive of a school official shall not alone constitute imminent, serious physical harm.

“**Evaluation**” means an assessment conducted by a professional certified to conduct such an assessment for students suspected of or diagnosed with a disability defined herein.

“**Extended school year services or ESY services**” means special education and related services that are provided to a student with a disability beyond the normal school year in accordance with a student’s IEP, provided at no cost to the parents of the student, and meet the standards of the SEA.

“**Family Educational Rights and Privacy Act**” or “**FERPA**” means the Family Educational Rights and Privacy Act of 1974, Elementary and Secondary Education Amendments Act, approved August 21, 1974 (Pub.L. 93-380; 88 Stat 571, as amended; 20 U.S.C. § 1232g); and implementing rules at 34 C.F.R. Part 99.

“**FAPE**” means a free and appropriate public education as described in 20 U.S.C. § 1401.

“**FBA**” means a functional behavioral assessment.

“**Full approval status**” means the recognition by OSSE that a nonpublic special education school or program has demonstrated an ability to comply with the standards of this chapter, and has successfully completed an application for a certificate of approval.

“**Functional behavior assessment**” or “**FBA**” means a process for identifying (a) observable problem behaviors, (b) the contexts or routines where the problem behaviors are most likely, (c) the specific antecedent events within a context or routine that reliably predict occurrence of problem behaviors, and (d) the consequences that appear to maintain the problem behavior.

“**Individuals with Disabilities Education Act**” or “**IDEA**” means the Individuals with Disabilities Education Act, approved November 29, 1975 (Pub.L. 94-142, 89 Stat. 773, as amended; codified at 20 U.S.C. §§ 1400 *et seq.*).

“**Individualized Education Program**” or “**IEP**” means a written plan that specifies the special education and related services to be provided to meet the unique educational needs of a student with a disability, in conformance with the IDEA, as described in 20 U.S.C. § 1414(d).

“**Local Educational Agency**” or “**LEA**” means a public agency having administrative control and direction of a public elementary or secondary school in the District of Columbia. The terms includes public charter schools; provided, however, that if a public charter school has ceded its responsibility for providing special education services to the District of Columbia Public Schools (“DCPS”) pursuant to D.C. Official Code § 38-1802.10(c) (2012 Repl.), then DCPS shall be considered the LEA for such public charter school for purposes of this chapter.

“**LEA of enrollment**” means the local educational agency (LEA) at which the student remains enrolled while attending a nonpublic special education school or program, that remains responsible for ensuring the provision of FAPE to the student and compliance with the IDEA.

“**Location assignment**” means the actual school site or facility at which the student will receive his or her instruction.

“**Mechanical restraint**” means the use of a physical device to restrict the movement of a student or the movement or normal function of a portion of

his or her body. A protective or stabilizing device ordered by a physician shall not be considered mechanical restraint.

“**Neglect**” shall have the meaning provided that term by D.C. Official Code § 16-2301 (2012 Repl.).

“**Nonpublic special education school or program**” means a privately owned or operated preschool, school, educational organization, or program, no matter how titled, that maintains or conducts classes for the purpose of offering instruction, for a consideration, profit, or tuition, to students with disabilities; provided that the term “nonpublic special education school or program” shall not include a privately owned or operated preschool, elementary, middle, or secondary school whose primary purpose is to provide educational services to students without disabilities, even though the school may serve students with disabilities in a regular academic setting. If a nonpublic special education school or program has multiple locations, each location will be considered and treated by OSSE an individual program in regards to location of service and rate confirmation.

“**OSSE**” means the Office of the State Superintendent of Education for the District of Columbia.

“**Parent**” shall have the meaning provided that term in the IDEA, 20 U.S.C. § 1401(23); 34 § C.F.R. 300.30 and 5-E DCMR § 3001.

“**Personnel**” means any individual on site at a nonpublic special education school or program or a person who works with a student on a full-time, part-time, temporary or contractual basis who is paid for services or volunteers service without monetary or other compensatory benefit.

“**Physical restraint**” means the use of bodily force to limit a student’s freedom of movement.

“**Placement**” means the level of service and the type of enrollment, classified by the level of restrictiveness (*e.g.*, general education classroom, separate classroom, resource classroom, or nonpublic school.)

“**Placement Act**” means the Placement of Students with Disabilities in Nonpublic Schools Amendment Act of 2006, effective March 14, 2007 (D.C. Law 16-269; D.C. Official Code §§ 38-2561.01 *et seq.*) (2012 Repl.).

“**Prone restraint**” means the use of force and/or use of a physical device to hold a student face down or stomach down on the floor.

“**Provider**” means a facility or person providing a special education or related service to a student with a disability.

“Psychiatric residential treatment facility” or “PRTF” means a psychiatric facility that is not a hospital and is accredited by the Joint Commission on Accreditation of Healthcare Organizations, the Commission on accreditation of Rehabilitation Facilities, the Council on Accreditation of Services for Families and Children, or by any other accrediting organization with comparable standards recognized by the state in which the facility is located and provides inpatient psychiatric services for individuals under the age of twenty-two (22) in conformance with the federal requirements set forth in Sections 441.151 through 441.182 of Title 42 of the Code of Federal Regulations.

“Rate” means a fee for a special education service, including the per-diem or hourly cost paid to each nonpublic special education day or residential school (including PRTFs) or program, for tuition, and related services delivered in conformance with an IEP, unless otherwise specified in this chapter.

“Receipt Date” means the date of actual receipt for hand delivered documents and documents sent electronically to a designated contact; or three days after the postmark date of transmittal.

“Rehabilitation Act” means the Rehabilitation Act of 1973, approved September 26, 1973 (Pub.L. 93-112, 87 Stat. 355; 29 U.S.C. 701 *et seq.*).

“Related Service” shall have the meaning provided that term in the IDEA, 20 U.S.C. § 1401(26); and 34 C.F.R § 300.34.

“Seclusion” means the involuntary confinement of a student alone in a room or area from which he or she is physically prevented from leaving, or from which as student believes he or she may not leave, whether or not in a locked area.

“Special education” means specially designed instruction for students with disabilities, as provided in the IDEA, 20 U.S.C. § 1401(29).

“Student” means a student with a disability for whom the District of Columbia is paying tuition, fees, or other costs to attend a nonpublic special education school or program.

“Student with a disability” means a student determined to have one of the conditions, disabilities or impairments listed in the D.C. Official Code § 38-2561.01(14) or any other condition, disability, or impairment described in Section 602(3) of the IDEA, 20 U.S.C. § 1401; or in Section 7(8) of the Rehabilitation Act, 29 U.S.C. § 796(8)).

“Uniform Per Student Funding Formula” means the manner of calculating tuition rates for students, using weighting as a multiplication factor applied to a foundation cost for student counts in certain grade levels or special needs programs to account for differences in the cost of educating students with adequate regular education services as described in the Uniform Per Student Funding Formula for Public Schools and Public Charter Schools Act of 1998, effective March 26, 1999, as amended (D.C. Law 12-207; D.C. Official Code § 38-2901 *et seq.* (2012 Repl.)).

“Truancy” means the absence of a school-age student from any portion of the school day without a valid excuse consistent with the requirements of the attendance and truancy requirements set forth in Chapter 21 of Subtitle A of Title 5 of the DCMR.

Persons desiring to comment on this proposed rulemaking may attend the public hearings scheduled to be held at Room 300, OSSE, 810 1 St. NE, Washington, D.C. 20002, on April 29, 2014, 1:30 p.m. until 3:30 p.m., and May 6, 2014, 5:30 p.m. until 7:30 p.m.; individuals wishing to testify at the hearing should contact Christie Weaver, Policy Analyst, at 202-481-3870 or by e-mail at Christie.weaver@dc.gov. Individuals representing themselves and presenting testimony will be limited to five (5) minutes; individuals representing an organization will be limited to a total presentation time of seven (7) minutes at each public hearing. Persons may also file comments in writing by mail or hand delivery to “Dr. Amy Maisterra, Assistant Superintendent of Specialized Education, c/o Grace Chien, Director of Policy, OSSE, Division of Specialized Education, 810 1st St. NE – 5th Floor, Washington, D.C. 20002” not later than sixty (60) 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.

DEPARTMENT OF HEALTH**NOTICE OF PROPOSED RULEMAKING**

The Director of Health, pursuant to the authority set forth in Section 2(a) of the Preventive Health Services Amendments Act of 1985 (“Act”), effective February 21, 1986 (D.C. Law 6-83; D.C. Official Code § 7-301 (2012 Repl.)), and Mayor’s Order 98-141, dated August 20, 1998, hereby gives notice of his intent to adopt the following amendments to Chapter 2 (Communicable and Reportable Diseases) of Subtitle B (Public Health and Medicine) of Title 22 (Health) of the District of Columbia Municipal Regulations (DCMR).

The rules would amend Sections 215, 216, and 299 of Title 22-B to update procedures for reporting cancer.

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

Chapter 2 (Communicable and Reportable Diseases) of Subtitle 22-B (Public Health and Medicine) of the DCMR is amended as follows:**Section 215.1 is amended to read as follows:**

215.1 Each health care provider and health care facility shall report benign tumors of the brain and central nervous system and all malignant cancers as follows:

- (a) Each health care provider and health care facility shall report, within six (6) months of diagnosis or first contact, any patient diagnosed with or treated for benign tumors of the brain or central nervous system or any malignant cancers, or for whom cancer treatment planning was performed but the patient opted for no treatment.
- (b) Each health care provider and health care facility shall report, within six (6) months of diagnosis or first contact, any patient diagnosed with or treated for benign tumors of the brain or central nervous system or any malignant cancers, or who expired with cancer as a cause of death; and
- (c) Each health care provider and health care facility shall make available to the Director or an agent of the Director all information necessary to verify the information in any report submitted pursuant to this section.

Section 215.4 is amended to read as follows:

215.4 Each report required by Subsection 215.1 shall be submitted electronically by a secured form of transmission approved by the North American Association of

Central Cancer Registries (NAACCR) to the DC Central Cancer Registry within the Department.

Section 216.1 is amended to read as follows:

216.1 A District of Columbia Central Cancer Registrar or other person designated by the Director is authorized to visit any health care facility or health care provider to review and duplicate reports required by this chapter or records that contain information required to be submitted pursuant to this chapter to ensure the completeness and accuracy of the information.

Section 299.1 is amended by striking the definition for “District of Columbia Central Registrar”.

Comments on the proposed rules should be sent in writing to the Department of Health, Office of the General Counsel, 5th Floor, 899 North Capitol Street, NE, Washington, DC 20002, not later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Copies of the proposed rules may be obtained Monday through Friday, except holidays, between the hours of 8:15 A.M. and 4:45 P.M. at the same address. Questions concerning the rulemaking should be directed to Angli Black, Administrative Assistant, at Angli.Black@dc.gov or (202) 442-5977.

**THE OFFICE OF ADMINISTRATIVE HEARINGS
DISTRICT OF COLUMBIA COMMISSION ON
SELECTION AND TENURE OF
ADMINISTRATIVE LAW JUDGES**

**REQUEST FOR COMMENTS REGARDING REAPPOINTMENT OF
ADMINISTRATIVE LAW JUDGE**

The Commission on Selection and Tenure of Administrative Law Judges (“Commission”) Seeks Comments Regarding the Potential Reappointment of Administrative Law Judge Steven M. Wellner.

This is to notify members of the bar and the general public, pursuant to section 3705.7 of Title 6 of the District of Columbia Municipal Regulations (“DCMR”), that the Commission has begun review of the qualifications for reappointment of Administrative Law Judge Wellner of the District of Columbia Office of Administrative Hearings. Administrative Law Judge Wellner has filed a statement with the Commission requesting reappointment to a ten-year term upon the expiration of his six-year term on May 30, 2014.

Section 3705.21 of Title 6 of the DCMR provides:

In deciding whether to reappoint an Administrative Law Judge, the Commission shall consider all information it has received concerning the reappointment, and the voting members shall give significant weight to the recommendation of the Chief Administrative Law Judge, unless they determine that the recommendation is not founded on substantial evidence. The Commission shall reappoint the Administrative Law Judge if it finds that the Administrative Law Judge has satisfactorily performed the responsibilities of his or her office and is likely to continue to do so.

In addition to the specific qualifications applicable to all Administrative Law Judges contained in section 3703 of Title 6 of the DCMR (*Appointment, Reappointment, Discipline and Removal of Administrative Law Judges by the Commission on Selection and Tenure of Administrative Law Judges*), section 3703.5 of Title 6 of the DCMR states: “An Administrative Law Judge shall possess judicial temperament, judgment, expertise and analytical and other skills necessary and desirable for an Administrative Law Judge.”

The Commission hereby requests members of the bar and other attorneys, litigants, interested organizations, and members of the public to submit any information bearing on the qualifications of Administrative Law Judge Wellner, which he or she believes will aid the Commission in deciding whether to reappoint this Administrative Law Judge. The cooperation of the community at an early stage will greatly aid the Commission in fulfilling its responsibilities. The identity of any person submitting information shall be kept confidential unless expressly authorized by the person submitting the information.

All communications should be received by the Commission on or before April 31, 2014 and should be mailed or delivered in a sealed envelope marked “Confidential – ALJ Reappointments,” addressed to:

Commission on Selection and Tenure of Administrative Law Judges
Office of Administrative Hearings
District of Columbia Government
441 4th Street, N.W.
Suite 450N
Washington, D.C. 20001

The members of the Commission are:

The Honorable Yvonne M. Williams
Interim Chief Judge Wanda R. Tucker
James W. Cooper
Nadine C. Wilburn

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD**

**NOTICE OF MEETING
INVESTIGATIVE AGENDA**

**WEDNESDAY, APRIL 2, 2014
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009**

On April 2, 2014 at 4:00 pm, the Alcoholic Beverage Control Board will hold a closed meeting regarding the matters identified below. In accordance with Section 405(b) of the Open Meetings Amendment Act of 2010, the meeting will be closed “to plan, discuss, or hear reports concerning ongoing or planned investigations of alleged criminal or civil misconduct or violations of law or regulations.”

1. Case#14-CC-00010 The Tap & Parlour/Bohemian Caverns, 2001 11TH ST NW A Retailer C Tavern, License#: ABRA-074895

2. Case#14-251-00051 Lotus, 1420 K ST NW Retailer C Nightclub, License#: ABRA-075162

3. Case#14-CC-00013 Lima Restaurant and Lounge, 1401 K ST NW B Retailer C Tavern, License#: ABRA-073817

4. Case#14-AUD-00019 Mc Faddens, 2401 PENNSYLVANIA AVE NW Retailer C Restaurant, License#: ABRA-060591

5. Case#14-CC-00014 Froggy Bottom Pub, 2021 K ST NW Retailer C Restaurant, License#: ABRA-090412

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
LEGAL AGENDA

WEDNESDAY, APRIL 2, 2014 AT 1:00 PM
2000 14th STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

1. Review of Settlement Agreement dated March 15, 2014 between ANC 5D and Peacock Liquors. *Peacock Liquors*, 1625 New York Avenue NE, Retailer A, Lic#: 78305.*

2. Review of Final Rulemaking for East Dupont Circle Moratorium.

3. Review of three (3) requests from E & J Gallo to provide retailers with products valued at more than \$50 and less than \$500.

*** In accordance with D.C. Official Code §2-574(b) Open Meetings Act, this portion of the meeting will be closed for deliberation and to consult with an attorney to obtain legal advice. The Board's vote will be held in an open session, and the public is permitted to attend**

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
LICENSING AGENDA

WEDNESDAY, APRIL 2, 2014 AT 1:00 PM
2000 14th STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

1. Review Manufacturer's Application requesting Change of Hours of Sales and Delivery and Change of Hours for Tasting and Consumption. *Approved Hours of Sales and Delivery*: Sunday 9am to 9pm, Monday-Saturday 6am to 1am. *Proposed Hours of Sales and Delivery*: Sunday-Saturday 7am to 12am. *Approved Hours of Tasting and Consumption*: Thursday-Saturday 1pm to 9pm. *Proposed Hours of Tasting and Consumption*: Sunday-Saturday 1pm to 9pm. No outstanding fines/citations. No Settlement Agreement. ANC 4B. SMD 4B07. *Three Star Brewing Company*, 6400 Chillum Place NW, Manufacturer B, License No. 087686.

2. Review letters from licensee and Attorney Emanuel N. Mpras requesting Substantial Change to expand premises into adjacent property. No outstanding fines/citations. No Settlement Agreement. ANC 7F. SMD 7F06. *M & M Market*, 3544 East Capitol Street NE, Retailer Class B Grocery, License No. 078461.

3. Review or Manager's License Application for *Jason A. Hill*, ABRA-094569.

4. FYI. Letter from Paul L. Pascal regarding WRAP SoberRide.

***In accordance with D.C. Official Code §2-574(b) of the Open Meetings Amendment Act, this portion of the meeting will be closed for deliberation and to consult with an attorney to obtain legal advice. The Board's vote will be held in an open session, and the public is permitted to attend.**

DC MAYOR'S OFFICE ON ASIAN AND PACIFIC ISLANDER AFFAIRS**DC MAYOR'S COMMISSION ON ASIAN AND
PACIFIC ISLANDER AFFAIRS****NOTICE OF REGULAR MEETING**

The DC Mayor's Commission on Asian and Pacific Islander Affairs will be holding its regular meeting on Thursday, April 3, 2014 at 6:30 pm.

The meeting will be held at the OAPIA office at One Judiciary Square, 441 4th Street NW, Suite 721N, Washington, DC 20001. The location is closest to the Judiciary Square metro station on the red line of the Metro. All commission meetings are open to the public. If you have any questions about the commission or its meetings, please contact oapia@dc.gov or Andrew Chang at andrew.chang@dc.gov. Telephone: (202) 727-3120.

The DC Commission on Asian and Pacific Islander Affairs convenes monthly meetings to discuss current issues affecting the DC AAPI community.

**DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION**

NOTICE OF PUBLIC MEETING

**Board of Barber and Cosmetology
1100 4th Street SW, Room E300
Washington, DC 20024**

Meeting Agenda

**April 7, 2014
10:00 a.m.**

1. Call to Order – 10:00 a.m.
2. Members Present
3. Staff Present
4. Comments from the Public
5. Review of Correspondence
6. Applications for Licensure
7. Executive Session (Closed to the Public)
8. Old Business
9. New Business
10. Adjourn

Next Scheduled Board Meeting – May 5, 2014.

**DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION**

NOTICE OF PUBLIC MEETING

**Board of Funeral Directors
1100 4th Street SW, Room E300
Washington, DC 20024**

Meeting Agenda

**April 3, 2014
11:00 A.M.**

1. Call to Order – 11:00 a.m.
2. Members Present
3. Staff Present
4. Comments from the Public
5. Review of Correspondence
6. Draft Minutes, March 6, 2014
7. Executive Session (Closed to the Public)
8. Old Business
9. New Business
10. Adjourn
11. Next Scheduled Board Meeting – May 1, 2014 at 11:00 a.m.

**DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
Occupational and Professional Licensing Division**

**Board of Professional Engineering
1100 4th Street SW, Room E300
Washington, DC 20024**

AGENDA

**April 24, 2014
11:00 A.M.**

- 1) Meeting Call to Order
- 2) Attendees
- 3) Comments from the Public
- 4) Minutes: Review draft of 24 March 2014
- 5) Old Business
- 6) New Business
- 7) Executive Session
 - a) Pursuant to § 2-575(13) the Board will enter executive session to review application(s) for licensure
 - b) Pursuant to § 2-575(9) the Board will enter executive session to discuss a possible disciplinary action
- 8) Application Committee Report
- 9) Adjournment

Next Scheduled Meeting – Thursday, 26 June 2014
Location: 1100 4th Street SW, Conference Room E300

**DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION
NOTICE OF PUBLIC MEETING**

**District of Columbia Board of Real Estate Appraisers
1100 4th Street SW, Room 300 B
Washington, DC 20024**

AGENDA

**April 23, 2014
10:00 A.M.**

1. Call to Order – 10:00 a.m.
2. Attendance (Start of Public Session) – 10:30 a.m.
3. Executive Session (Closed to the Public) – 10:00 – 10:30 a.m.
 - A. Legal Committee Recommendations
 - B. Legal Counsel Report
 - C. Application Review
4. Comments from the Public
5. Minutes - Draft, March 19, 2013
6. Recommendations
 - A. Review - Applications for Licensure
 - B. Legal Committee Report
 - C. Education Committee Report
 - D. Budget Report
 - E. 2014 Calendar
 - F. Correspondence
7. Old Business
8. New Business
9. Adjourn

Next Scheduled Regular Meeting, May 21, 2014
1100 4th Street, SW, Room 300B, Washington, DC 20024

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

D.C. BOXING AND WRESTLING COMMISSION

1100 4th Street SW-Suite E500, SW
Washington, DC. 20024

April 8, 2014

7:00 P.M.

Website: http://www.pearsonvue.com/dc/boxing_wrestling/

AGENDA

CALL TO ORDER & ROLL CALL

COMMENTS FROM THE PUBLIC & GUEST INTRODUCTIONS

REVIEW OF MINUTES

- Approval of Minutes

UPCOMING EVENTS

1. April 19, 2014 Golden Boy Promotions presents another historic event when IBF Light Heavyweight World Champion Bernard Hopkins faces WBA World Champion Beibut Shumenov at the DC Armory
2. May 31, 2014 Promoter: April Hairston featuring Ty Barnett at the Washington Convention Center
3. September 13, 2014 Dr. McKnight Amateur Event
4. November 13, 2013 Pro-Boxing Flight Night at the Washington Hilton Hotel: Fight For Children
- 5.

OLD BUSINESS

1. DC Gym Assessment: April 2014 Tuesday & Thursday
2. Officials Training

NEW BUSINESS

1. Officials License Renewal
2. Upcoming Amateur Events
- 3.

ADJORNMENT

NEXT REGULAR SCHEDULED MEETING IS MAY 13, 2014

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
CONSTRUCTION CODES COORDINATING BOARD

NOTICE OF SPECIAL MEETING

The Construction Codes Coordinating Board will be holding a special meeting on Tuesday, April 8, 2014 at 10:30 a.m.

The meetings will be held at 1100 Fourth Street, SW, Fourth Floor Conference Room, Washington, D.C. 20024. The location is on the Metro Green Line, at the Waterfront/SEU stop. Limited paid parking is available on site.

Board information is available on the website of the Department of Consumer and Regulatory Affairs at dcra.dc.gov, under "Events Calendar".

**D.C. DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUSINESS AND PROFESSIONAL LICENSING ADMINISTRATION**

SCHEDULED MEETINGS OF BOARDS AND COMMISSIONS

April 2014

CONTACT PERSON	BOARDS AND COMMISSIONS	DATE	TIME/ LOCATION
Daniel Burton	Board of Accountancy	RECESS	8:30 am-12:00pm
Lisa Branscomb	Board of Appraisers	23	8:30 am-4:00 pm
Jason Sockwell	Board Architects and Interior Designers	RECESS	8:30 am-1:00 pm
Cynthia Briggs	Board of Barber and Cosmetology	7	10:00 am-2:00 pm
Sheldon Brown	Boxing and Wrestling Commission	8	7:00 pm-8:30 pm
Kevin Cyrus	Board of Funeral Directors	3	9:30am-2:00 pm
Daniel Burton	Board of Professional Engineering	24	9:30 am-1:30 pm
Leon Lewis	Real Estate Commission	15	2:00 pm-4:00 pm
Pamela Hall	Board of Industrial Trades	15	1:00 pm-4:00 pm
	Asbestos Electrical Elevators Plumbing Refrigeration/Air Conditioning Steam and Other Operating Engineers		

Dates and Times are subject to change. All meetings are held at 1100 4th St., SW, Suite E-300 A-B Washington, DC 20024. For further information on this schedule, please contact the front desk at 202-442-4320.

**DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION**

NOTICE OF PUBLIC MEETING

District of Columbia Real Estate Commission
1100 4th Street, S.W., Room 300B
Washington, D.C. 20024

AGENDA
April 15, 2014

1. Call to Order - 1:30 p.m.
2. Executive Session (Closed to the Public) – 1:30 -2:00 p.m.
 - A. Legal Committee Recommendations
 - B. Review – Applications for Licensure
 - C. Legal Counsel Report
3. Attendance (Start of Public Session) – 2:00 p.m.
4. Comments from the Public
5. Minutes - Draft, March 11, 2014
6. Recommendations
 - A. Review - Applications for Licensure
 - B. Legal Committee Report
 - C. Education Committee Report
 - D. Budget Report
 - E. 2014 Calendar
 - F. Correspondence
7. Old Business
 - Non-Employee IDs
8. New Business
 - A. Report - ARELLO Mid-Year Meeting – April 8-13, 2014
 - B. Discussion – Commission Newsletter

Agenda – Real Estate Commission
Page Two

9. Adjourn

Next Scheduled Regular Meeting, May 13, 2014
1100 4th Street, SW, Room 300B, Washington, DC 20024

OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
EDUCATION LICENSURE COMMISSION

SECOND NOTICE OF REVISED MEETING SCHEDULE

Pursuant to the Education Licensure Commission Act of 1976, effective April 6, 1977 (D.C. Law 1-104; 23 D.C. Reg. 8734; D.C. Official Code § 38-1301 *et seq.*) (2012 Repl.), and the District of Columbia Administrative Procedure Act, effective October 21, 1968 (82 Stat. 1203; D.C. Official Code § 2-501 *et seq.*) (2012 Supp.), the Education Licensure Commission (“Commission”) hereby gives notice of a second revision to the annual schedule of meetings for the 2014 Calendar Year, which was published in the *D.C. Register* on December 13, 2013. A revision of this schedule was published in the *D.C. Register* on February 14, 2014.

The Commission holds regular bi-monthly public meetings, during which an executive pre-session is usually held. In months when the Commission is not holding a public meeting, the Commission holds bi-monthly work meetings. These meetings are usually held at 9:00 am in Grand Hall B on the 3rd floor of the Office of the State Superintendent of Education building, located at 810 First Street, NE, Washington, DC 20002.

For the following previously-announced meetings, the location and/or time of the meeting is being revised from the regularly-scheduled time and/or location to a new time and/or location as set forth below:

DATE	TIME	LOCATION
April 3, 2014	no change proposed	810 First Street, NE; 3 rd Floor, Grand Hall A
May 1, 2014	9:30 a.m.	810 First Street, NE; 2 nd Floor, Conference Room 2031
June 12, 2014	9:30 a.m.	no change proposed
July 10, 2014	9:30 a.m.	no change proposed
September 11, 2014	9:30 a.m.	no change proposed
October 2, 2014	9:30 a.m.	810 First Street, NE; 3 rd Floor, Grand Hall A
November 6, 2014	9:30 a.m.	810 First Street, NE; 3 rd Floor, Grand Hall A
December 4, 2014	9:30 a.m.	no change proposed

If you have questions regarding this schedule of meetings and New Applicant Workshops, please contact the Executive Director of the Education Licensure Commission, Angela Lee at (202) 724-2095 or at Angela.Lee@dc.gov.

OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**NOTICE OF FUNDING AVAILABILITY****Fiscal Year 2014 Farm Field Trip Grant**Announcement Date: **March 28, 2014**Request for Application Release Date: **April 11, 2014**Pre-Application Question Period Ends: **April 25, 2014**Application Submission Deadline: **May 23, 2014**

The Office of the State Superintendent of Education (OSSE), Wellness and Nutrition Services Division is soliciting grant applications for the District of Columbia Farm Field Trip grant. **The purpose of this grant is to increase the capacity of D.C. schools to participate in farm field trips as part of an integrated farm to school program.**

Eligibility: OSSE will accept applications from Washington D.C. public schools and public charter schools participating in the Healthy Schools Act (2010) and community-based organizations applying on behalf of a teacher or school.

Length of Award: The grant award period is one year.

Available Funding for Award: The total funding available for this award period is \$40,000. Eligible schools and organizations may apply for an award amount up to \$1,500 per school.

Anticipated Number of Awards: OSSE has funding available for at least twenty-five (25) awards.

For additional information regarding this grant competition, please contact:

Erica Steinhart
Farm to School Specialist
Wellness and Nutrition Services Division
Office of the State Superintendent of Education
Government of the District of Columbia
810 1st Street NE, 4th Floor
Washington, DC 20002
Phone: 202.442.8940
Email: erica.steinhart@dc.gov

The RFA and applications will be available at <http://osse.dc.gov/service/farm-field-trip-grant> or by contacting Erica Steinhart.

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 renewal #6004-R2 to the Cellco Partnership (DBA Verizon Wireless) to operate one (1) existing 60 kW diesel-fired emergency generator set at 6101 16th Street NW, Washington, DC 20011. The contact person for the facility is Matthew Melito, Director of Operations, at (301) 512-2000.

The renewal application to operate the generator set and the draft renewal 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 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 April 28, 2014 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

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The renewal application to operate the generator set and the draft renewal 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.

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DISTRICT DEPARTMENT OF THE ENVIRONMENT

FISCAL YEAR 2014

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The renewal application to operate the generator set and the draft renewal 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.

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DISTRICT DEPARTMENT OF THE ENVIRONMENT

FISCAL YEAR 2014

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The renewal application to operate the generator set and the draft renewal 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.

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DISTRICT DEPARTMENT OF THE ENVIRONMENT

FISCAL YEAR 2014

PUBLIC NOTICE

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The renewal application to operate the generator set and the draft renewal 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.

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DISTRICT DEPARTMENT OF THE ENVIRONMENT

FISCAL YEAR 2014

PUBLIC NOTICE

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The renewal application to operate the generator set and the draft renewal 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.

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Air Quality Division
District Department of the Environment
1200 First Street NE, 5th Floor
Washington, DC 20002
Stephen.Ours@dc.gov

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For more information, please contact Stephen S. Ours at (202) 535-1747.

DISTRICT DEPARTMENT OF THE ENVIRONMENT

FISCAL YEAR 2014

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The renewal application to operate the generator set and the draft renewal 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.

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DISTRICT DEPARTMENT OF THE ENVIRONMENT

FISCAL YEAR 2014

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The proposed emission limits are as follows:

- a. No person shall discharge into the atmosphere more than fifteen (15) pounds of volatile organic compound (VOC) emissions in any one (1) day, nor more than three pounds (3 lb.) in any one (1) hour, from any combination of articles, machines, units, equipment, or other contrivances at a facility, unless the uncontrolled VOC emissions are reduced by at least ninety percent (90%) overall capture and control efficiency. [20 DCMR 700.2]
- 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. Visible emissions shall not be emitted into the outdoor atmosphere from the paint spray booth. [20 DCMR 107 and 606]

The application to operate the paint booth 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
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Washington, DC 20002
Stephen.Ours@dc.gov

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For more information, please contact Stephen S. Ours at (202) 535-1747.

DISTRICT DEPARTMENT OF THE ENVIRONMENT

FISCAL YEAR 2014

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Emergency Generator to be Permitted

Equipment Location	Address	Generator Size	Engine Size	Permit No.
Fencing enclosure on the ground level of the Railway Express Building	900 2 nd Street NE Washington, DC 20002	600 kW	671.4 kW (900 bhp)	6844

The proposed emission limits are as follows:

- a. Visible emissions shall not be emitted into the outdoor atmosphere from the 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]
- 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]

The estimated emissions from the emergency generator are as follows:

Pollutant	Emission Rate (lb/hr)	Maximum Annual Emissions (tons/yr)
Carbon Monoxide (CO)	5.746	1.4365
Oxides of Nitrogen (NO _x)	26.6968	6.6742
Total Particulate Matter (PM Total)	1.8785	0.4696
Volatile Organic Compounds (VOCs)	2.1791	0.5448
Sulfur Dioxide (SO _x)	1.7547	0.4387

The application to operate the emergency generator 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
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FISCAL YEAR 2014

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Emissions:

Maximum annual potential emissions from the unit are expected to be as follows:

Pollutant	Maximum Annual Emissions (tons/yr)
Particulate Matter (PM) (Total) ¹	0.0098
Sulfur Oxides (SOx)	0.0003
Nitrogen Oxides (NOx)	3.073
Volatile Organic Compounds (VOC)	0.02
Carbon Monoxide (CO)	0.298

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.

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Department of Health Care Finance & Department on Disability Services
Revised Public Notice of Proposed Amendments and Proposed Transition Plan
to the Home and Community-Based Waiver for
Persons with Intellectual and Developmental Disabilities

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in an Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 774; D.C. Official Code § 1-307.02) (2012 Repl. & 2013 Supp.), and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)), and the Director of the Department on Disability Services (DDS), pursuant to authority set forth in Title I of the Department on Disability Services Establishment Act of 2006, effective March 14, 2007 (D.C. Law 16-264; D.C. Official Code § 7-761.01 *et seq.*), hereby give notice of their intent to submit a transition plan for and amendments to, the District of Columbia Medicaid program's Home and Community-Based Services (HCBS) Waiver for Persons with Intellectual and Developmental Disabilities (IDD) to the Department of Health and Human Services' Centers for Medicare and Medicaid Services (CMS) for review and approval. This is a revised notice to correct the email address for public comments.

CMS regulations, published in the Federal Register on January 16, 2014 and effective March 17, 2014, changed the definition of home and community-based services settings for HCBS Waiver services. Additionally, the new rule requires that, at the time HCBS Waiver amendments are submitted, DHCF and DDS must develop and submit to CMS a transition plan identifying how the HCBS Waiver will be brought into compliance with the new outcome-oriented definition of HCBS settings; provide a thirty (30) day public notice and comment period; and at least one additional opportunity for public comment.

The amendments contain proposed changes to the methods and standards for setting payment rates for some services and substantive changes to the amount, duration, and scope of some services.

The following summarizes the changes proposed in rate methodologies and reimbursements to be effective upon approval by CMS:

- 1) The Residential Habilitation and Supported Living services rate methodologies to be modified to match the overtime, paid time -off correction implemented in the Intermediate Care Facility for Individuals with Intellectual Disabilities rate methodology implemented in FY 2014.

- 2) Residential Habilitation, Supported Living, In-Home Supports, Host Home, Behavioral Support Non-Professional and Respite services to include increases in the hourly wage rates for the Direct Support Professionals (DSPs), and associated percentage rate increases for the House Manager and Qualified Intellectual Disabilities Professionals to be in compliance with the D.C. Living Wage Act of 2006 for FY 2014 and FY 2015.
- 3) The Day Habilitation services rate methodology to be changed to include nursing for staff training and oversight of Health Care Management Plans (HCMPs) at a ratio of 1:20, to be paid at the current nursing rate for a Registered Nurse of \$70,000. This change is to improve the health and welfare of Waiver beneficiaries who have complex health support needs.
- 4) Host Home services rate to include a vacancy factor of 93% (1.07), to promote parity with all other residential services which also have a vacancy factor.
- 5) Employment Readiness, Day Habilitation, Supported Employment (all), Group Supported Employment, and Family Training services wage rates to be increased by the market basket rate for nursing homes for FY 2015 of 1.3%. The rates for these services have not changed in six (6) years.
- 6) Clinical therapy rate research: to address the on-going problem with access to a qualified and adequate provider network in Physical Therapy (PT), Occupational Therapy (OT), Speech, Nutrition and Behavioral Support services, a rate review of other provider networks operating in the District was completed. Two primary competitors for clinicians are working in the schools and early intervention. The Office of the State Superintendent for Education's (OSSE) published rates under 5 DCMR § A-2853 pay \$98.90 per hour for PT, \$100.90 for Speech and \$105.57 for OT. Health Services for Children with Special Needs reports PT and OT at \$125 per hour, and Speech Therapy sessions at \$71.18. Master's prepared counselors through OSSE, the Department of Behavioral Health and the Children and Family Services Administration are paid at \$65.00. Based on the above the following rates are proposed: increase Behavior Paraprofessional from \$60 to \$65 per hour; increase OT, PT and Speech from \$65 to \$100 per hour; and, Nutrition from \$55 to \$60 per hour.
- 7) Art Therapies: Based on the comments from Art and Drama Therapy Institute, Inc. and market research, to increase Art Therapy to \$75 per hour, and to introduce a group rate.
- 8) Fitness: Based on current market conditions, to reduce the rate from \$75 to \$50 per hour, and to introduce a group rate.
- 9) Individualized Day Supports rate to be reduced from \$24.44 per hour to \$21.79 per hour, based on market research and to promote parity with other individualized supports.
- 10) Upon approval of the IDD HCBS waiver by CMS, DHCF and DDS intend to increase all rates in subsequent years based on requirements of the D.C. Living Wage Act of 2006 and the market basket index for nursing homes to keep pace with inflation using appropriate Medicaid long-term care services indicators.

The estimated increase in the approved annual aggregate expenditures in the HCBS IDD Waiver will be dependent upon the CMS approval date and subsequent publication date of the implementing rules. The estimated increase in the CMS approved annual aggregate expenditures in IDD HCBS Waiver Year 3 is estimated to be \$7,800,452 of which \$2,340,136 represents the local share.

Substantive changes to services proposed to be effective in IDD HCBS Waiver Year 2, or upon approval by CMS, may include but may not be limited to:

- 1) Behavioral Supports: Modify to a tiered service, utilizing low intensity behavioral supports, moderate behavioral supports, and high intensity behavioral supports, with corresponding caps on level of service, based on the person's assessed needs.
- 2) Day Habilitation: Add a nursing component to the service definition for the purpose of medication administration, and staff training and monitoring of the participants' HCMPs.
- 3) Individualized Day: Increase the cap on the number of service hours per week from thirty (30) to forty (40). Modify requirements for DSP qualifications. Allow relatives to provide DSP services for the person.
- 4) One-to-One Supports (Non-Behavioral): Add authority for one-to-one support for a person with a medical need who does not require skilled nursing.
- 5) Transportation Community Access: This service is not utilized and will be omitted because transportation is available through the Medicaid transportation provider.
- 6) Shared Living: This service is not utilized and will be omitted. In the future, it will be an available service under the Individual and Family Supports Home and Community-Based Services waiver that is in development.
- 7) Skilled Nursing: Skilled nursing services will no longer be prohibited in a Supported Living setting.
- 8) Supported Employment: Amends provider qualifications by requiring that all Supported Employment providers become Rehabilitation Services Administration service providers within one year of approval of these amendments.
- 9) Supported Living: Add specialized rate authority when needed to provide intensive individualized staffing to support a person due to complex behaviors that may involve a serious risk to the health safety or wellbeing of the person or others, or when required by court order.
- 10) Supported Living: Modify service to allow skilled nursing to be provided in this setting.
- 11) Wellness: Modify requirements for fitness trainers to include people who have obtained a bachelor's level degree in physical education, health education or exercise science. Modify provider qualifications for bereavement counselors to ensure access to a larger group of qualified providers.
- 12) DHCF shall use spousal impoverishment rules to determine eligibility for the home and community-based waiver group, whereby a certain amount of the couples' combined income and assets are protected for the spouse not receiving services under the HCBS waiver, to be effective in IDD HCBS Waiver Year 2, or upon approval by CMS

Copies of the proposed amendments and proposed transition plan may be obtained on the DDS website, no later than March 24, 2014, at <http://dds.dc.gov/> or upon request from Laura L. Nuss, Director, D.C. Department on Disability Services, 1125 Fifteenth Street, N.W., 4th Floor, Washington, D.C. 20005.

There are two opportunities to provide comments on the proposed waiver amendments and transition plan:

Written comments on the proposed waiver amendments and proposed transition plan shall be submitted to Laura L. Nuss, Director, D.C. Department on Disability Services, 1125 Fifteenth Street, N.W., 4th Floor, Washington, D.C. 20005, or via e-mail at DDSPublicComments@dc.gov, during the thirty (30) day public comment period, from March 24, 2014 through April 23, 2014.

DHCF and DDS will hold a public forum during which written and oral comments on the proposed amendments and transition plan will be accepted. The public forum will be held at St. Elizabeth East Gateway Pavilion, 2700 Martin Luther King Avenue SE, Washington, D.C. 20032, on April 9, 2014 from 4:00 – 6:00 PM.

Copies of this notice also will be published on the DDS website at <http://dds.dc.gov> and on the DHCF website at <http://dhcf.dc.gov>.

For further information contact Erin Leveton, (202) 730-1754, erin.leveton@dc.gov.

DEPARTMENT OF INSURANCE, SECURITIES, AND BANKING**DISTRICT OF COLUMBIA FINANCIAL LITERACY COUNCIL****NOTICE OF PUBLIC MEETING**

The Members of the District of Columbia Financial Literacy Council (DCFLC) will hold a meeting on Tuesday, April 1, 2014 at 2:00 PM. The meeting will be held at the DC Department of Insurance, Securities and Banking, 810 First St, NE, 7th Floor Conference Room, Washington, DC 20002. Below is the draft agenda for this meeting. A final agenda will be posted to the Department of Insurance, Securities, and Banking's website at <http://disb.dc.gov>.

For additional information, please call (202) 442-7832 or e-mail: idriys.abdullah@dc.gov

DRAFT AGENDA

- I. Call to Order**
- II. Welcoming Remarks**
- III. Minutes of the Previous Meeting**
- IV. Review of the 2013 Draft Annual Report**
- V. Public Comments**
- VI. Executive Session-Editing of 2013 Annual Report**
- VII. Adjournment**

KIPP DC PUBLIC CHARTER SCHOOL**REQUEST FOR PROPOSALS****Furniture Vendor Services**

KIPP DC invites all interested and qualified firms to submit proposals for furniture vendor services. Proposals are due no later than 5:00 pm on Tuesday, April 1, 2014. More information can be obtained by contacting via email:

Lindsay Snow
Lindsay.snow@kipfdc.org
202-223-4505

Moving Services

KIPP DC invites all interested and qualified firms to submit proposals for move services for the relocation of our 450 student high school in early summer 2014. Proposals are due no later than 5:00 pm on Tuesday, April 1, 2014. More information can be obtained by contacting via email:

Lindsay Snow
Lindsay.snow@kipfdc.org
202-223-4505

Decision and Order
PERB Case No. 14-U-02
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II. Background

On or about February 7, 2011, the Parties received an arbitration decision (“Award”) from Arbitrator Charles Feigenbaum that granted the Union’s grievance regarding the termination of eighty probationary DCPS teachers. (Amended Complaint at 1-2, Answer at 3). The Agency filed an arbitration review request with PERB, which was denied by the Board. (Amended Complaint at 2, Answer at 3). *See D.C. Public Schools and Washington Teachers’ Union, Local 6*, 59 D.C. Reg. 6772, Slip Op. No. 1130, PERB Case No. 11-A-04 (2011). DCPS filed for review of PERB’s decision in the D.C. Superior Court. (Amended Complaint at 2, Answer at 3). On April 3, 2013, the Superior Court denied review. (Amended Complaint at 2, Answer at 3). DCPS did not appeal the Superior Court’s decision to the D.C. Court of Appeals. (Amended Complaint at 2, Answer at 3).

In its Amended Complaint, WTU alleges that “DCPS has failed and refused to comply with the [arbitration] award.” (Amended Complaint at 2). DCPS denies WTU’s allegation. (Answer at 3). DCPS asserts that the Complaint is untimely. (Answer at 3-4). In addition, DCPS asserts that it “has substantially complied with the arbitration decision.” (Answer at 4).

III. Discussion

A. Motion to Dismiss on Timeliness of Complaint

DCPS asserts that WTU’s Complaint is untimely. (Answer at 3-4). DCPS argues that the Arbitrator provided DCPS with a sixty (60) day timeframe to comply with the Award. (Answer at 4). DCPS argues that WTU’s claim against DCPS became ripe after the Arbitrator’s sixty days designated for compliance, when DCPS did not receive an injunction prior to its appeal to the Superior Court, and that the 120 days for Complainant to file an unfair labor practice complaint lapsed prior to WTU’s Complaint. (Answer at 4).

Board Rule 520.4 states: “Unfair labor practice complaints shall be filed not later than 120 days after the date on which the alleged violations occurred.” 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 an unfair labor practice complaint. The Board has held that 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); *see also Public Employee Relations Board v. D.C. Metropolitan Police Department*, 593 A.2d 641 (D.C. 1991). The Board does not have discretion to extend the deadline for initiating an action. *Hoggard*, Slip Op. No. 352.

DCPS relies on *Pitt v. D.C. Dep’t of Corrections*, 59 D.C. Reg. 5554, Slip Op. No. 998, PERB Case No. 09-U-06 (2009), for its timeliness argument. In *Pitt*, the petitioner received a denial by the respondent of representation in an arbitration matter, and alleged that the respondent failed to arbitrate his case. The *Pitt* Board found that the time to file against the respondent for its denial commenced on the date of the denial of representation. *Id.* The Board’s

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statement that “the time for filing a Complaint commences 120 days after the date Petitioner admits he actually became aware of the event giving rise to the Complaint allegations” falls within the Board’s precedent of “when Complainant knew or should have known of the acts giving rise to the violation.” *Id.* at 8. The petitioner was denied representation by the respondent, and consequently, *knew* of the acts giving rise to the violation. *Id.* The Board’s statement that “the Petitioner admits he actually became aware of the event” refers to the petitioner receiving the denial from the respondent for representation, and did not create a second standard for computing the Board’s 120 day deadline. *Id.* Therefore, the Board rejects DCPS’s argument that the Board has two standards for computing the 120 day deadline.

In its Motion to Dismiss, DCPS argues that the Board has two standards for computing the 120-day deadline for Board Rule 520.4. (Motion to Dismiss at 3). DCPS asserts that the Board’s holds that the deadline is triggered (1) “when the Complainant knew or should have known of the acts giving rise to the violation,” or (2) “the date the Petitioner admits he actually became aware of the event giving rise to the Complaint allegations.” *Id.* DCPS relies upon *Pitt* for its assertion. The Board did not create two standards in *Pitt*. DCPS’s assertion that “the date the Petitioner admits he actually became aware of the event giving rise to the Complaint allegations” is a second standard improperly draws the quotation from the larger context of the Board’s Decision. The possible existence of two standards, which this Board rejects, does not affect the outcome in this case.

In *Pitt*, there was a specific event, i.e. the respondent’s denial of representation, that gave rise to the petitioner’s complaint. *Id.* In the present case, the Union was not presented with a denial of the Agency’s compliance. The Union has submitted evidence that the Agency intended to comply with the Award, and was in the process of compliance at the time WTU filed its Complaint. (Motion on Pleadings, Exhibit 2). The Board’s computation of the 120-day deadline starts “when the Complainant knew or should have known of the acts giving rise to the violation.” *Pitt*, Slip Op. No. 998, at p. 8. (citing *Jackson and Brown v. American Federation of Government Employees, Local 2741*, 48 D.C. Reg. 10959, Slip Op. 414 at p. 3, PERB Case No. 95-S-01 (1995)). The Agency does not dispute that it has not finished complying with the Arbitrator’s award. The Parties dispute when the WTU knew or should have known that DCPS would not fully comply. Whether the Complaint was timely filed depends upon when Complainant knew or should have known of the acts giving rise to the violation. *See Pitt*, Slip Op. No. 998, at p. 8. The Board finds that all of the foregoing constitutes an issue of fact that cannot be resolved on the pleadings alone. The Board denies DCPS’s Motion to Dismiss.

As there is an issue of fact that is necessary for the Board to determine its jurisdiction, the Board refers this matter to an unfair labor practice hearing to develop a factual record and make appropriate recommendations, pursuant to PERB Rule 520.9. *See Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Metropolitan Police Department*, 59 D.C. Reg. 5957, Slip Op. No. 999 at p. 9-10, PERB Case No. 09-U-52 (2009).

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B. Motion to Dismiss for Failure to State a Claim

While a Complainant need not prove its case on the pleadings, it must plead or assert allegations that, if proven, would establish the alleged statutory violations made in the complaint. *Virginia Dade v. National Association of Government Employees, Service Employees International Union, Local R3-06*, 46 D.C. Reg. 6876, Slip Op. No. 491 at p. 4, PERB Case No. 96-U-22 (1996); and *Gregory Miller v. American Federation of Government Employees, Local 631, AFL-CIO and D.C. Department of Public Works*, 48 D.C. Reg. 6560, Slip Op. No. 371, PERB Case Nos. 93-S-02 and 93-U-25 (1994). "The validation, i.e. proof, of the alleged statutory violation is what proceedings before the Board are intended to determine." *Jackson and Brown v. American Federation of Government Employees, Local 2741, AFL-CIO*, 48 D.C. Reg. 10959, Slip Op. No. 414 at p. 3, PERB Case No. 95-S-01 (1995).

When considering a motion to dismiss for failure to state a cause of action, the Board considers whether the alleged conduct may constitute a violation of the CMPA. *See Doctors' Council of District of Columbia General Hospital v. District of Columbia General Hospital*, 49 D.C. Reg. 1137, Slip Op. No. 437, PERB Case No. 95-U-10 (1995). Additionally, the Board views contested facts in the light most favorable to the Complainant in determining whether the Complaint gives rise to an unfair labor practice. *See JoAnne G. Hicks v. District of Columbia Office of the Deputy Mayor for Finance, Office of the Controller and American Federation of State, County and Municipal Employees, District Council 24*, 40 D.C. Reg. 1751, Slip Op. No. 303, PERB Case No. 91-U-17 (1992).

Pursuant to Board Rule 520.11, "the 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 determined that "[t]o maintain a cause of action, [a] Complainant must [allege] the existence of some evidence that, if proven, would tie the Respondent's actions to the asserted [statutory violation]. Without the existence of such evidence, [a] Respondent's actions [cannot] be found to constitute the asserted unfair labor practice. Therefore, a Complaint that fails to allege the existence of such evidence, does not present allegations sufficient to support the cause of action." *Goodine v. FOP/DOC Labor Committee*, 43 D.C. Reg. 5163, Slip Op. No. 476 at p. 3, PERB Case No. 96-U-16 (1996).

DCPS asserts that "none of the allegations in the Complaint constitutes a violation of the Comprehensive Merit Personnel Act as DCPS has substantially complied with the arbitrator's award." (Motion to Dismiss at 7). The Board has held that an Agency's refusal or failure to implement an award where there is no dispute over the award terms constitutes a refusal to bargain in good faith, violating the CMPA. *American Federation of State County and Municipal Employees, District Council 20, et al., AFL-CIO v. District of Columbia Public Schools, et al.*, 59 D.C. Reg. 3258, Slip Op. No. 796 at p. 4, PERB Case No. 05-U-06 (2005); *American Federation of Government Employees, Local 872, AFL-CIO v. D.C. Water and Sewer Authority*, 46 D.C. Reg. 4398, Slip Op. No. 497 at p. 3, PERB Case No. 96-U-23 (1996).

In the present case, WTU's Complaint alleges that DCPS has not complied with the Award, and these allegations, if proven, would establish violations of the CMPA. (Amended

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Complaint at 2). The Parties dispute DCPS's actions to comply with the Award. Establishing the existence of the alleged unfair labor practice violations requires an evaluation of the evidence and credibility determinations about conflicting allegations. Specifically, the issue of whether the Respondent's actions rise to the level of violations of the CMPA is a matter best determined after the establishment of a factual record, through an unfair labor practice hearing. *See Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Metropolitan Police Department*, 59 D.C. Reg. 5957, Slip Op. No. 999 at p. 9-10, PERB Case No. 09-U-52 (2009). Therefore, the Respondent's Motion to Dismiss is denied.

C. Motion for an Order Based on the Pleadings

WTU filed a Motion for an Order Based on the Pleadings, asserting that DCPS's Answer "admits that it failed to comply fully with the award." (Motion on Pleadings at 1). It is undisputed that the Award states, "DCPS shall make a 60-day good faith effort to locate terminated teachers." (Amended Complaint at 1, Answer at 2). In order to determine whether DCPS has committed an unfair labor practice, it must be determined whether DCPS has made a good faith effort to comply with the Arbitrator's award and whether its noncompliance fully with the Award was unreasonable or intentional at the time the Complaint was filed. This presents an issue of fact that cannot be resolved based on the pleadings alone. Therefore, the Board denies WTU's Motion for an Order Based on the Pleadings. As there is an issue of fact, pursuant to PERB Rule 520.9, the Board refers this matter to an unfair labor practice hearing to develop a factual record and make appropriate recommendations. *See Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Metropolitan Police Department*, 59 D.C. Reg. 5957, Slip Op. No. 999 at p. 9-10, PERB Case No. 09-U-52 (2009).

IV. Conclusion

The Board has found that material issues of fact are in dispute. Therefore, a factual record must be developed in order to determine the Board's jurisdiction, regarding timeliness of the Complaint's filing, which is in dispute by the Parties. In addition, the Parties dispute whether DCPS has complied with the Award.

The Board finds that all of the foregoing constitutes an issue of fact that cannot be resolved on the pleadings alone. Therefore, pursuant to PERB Rule 520.9, the Board refers this matter to an unfair labor practice hearing to develop a factual record and make appropriate recommendations. *See Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Metropolitan Police Department*, 59 D.C. Reg. 5957, Slip Op. No. 999 at p. 9-10, PERB Case No. 09-U-52 (2009).

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ORDER

IT IS HEREBY ORDERED THAT:

1. DCPS's Motion to Dismiss is denied.
2. WTU's Motion for an Order Based on the Pleadings is denied.
3. The Board's Executive Director shall refer the Unfair Labor Practice Complaint to a Hearing Examiner to develop a factual record and present recommendations in accordance with said record.
4. The Notice of Hearing shall be issued seven (7) days prior to the date of the hearing.
5. 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.

January 23, 2014

CERTIFICATE OF SERVICE

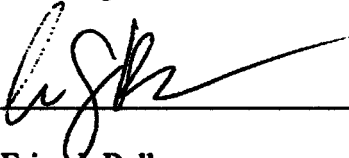
This is to certify that the attached Decision and Order in PERB Case No. 14-U-02 was transmitted via File & ServeXpress to the following Parties on the 18th of February, 2014.

Anton G. Hajjar
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via File&ServeXpress

Kaitlyn A. Girard
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D.C. Office of Labor Relations and Collective Bargaining
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Erica J. Balkum
Public Employee Relations Board
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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:)	
)	
Local 36, International Association)	
of Firefighters, AFL-CIO,)	
)	PERB Case No. 13-I-01
)	
Union,)	Opinion No. 1453
)	
and)	Motion to Suspend Impasse Proceedings
)	
District of Columbia Department)	
of Fire and Emergency Medical Services,)	
)	
)	
Agency.)	
_____)	

DECISION AND ORDER

The D.C. Department of Fire and Emergency Medical Services (“Agency”) has filed in the above-captioned matter a motion styled “Motion to Stay Impasse Proceedings as to Proposal 13 (Hours of Work, Schedule, and Leave) and as to Submission by January 17, 2014 of Post-Arbitration Briefs” (“Motion”). The Motion involves the interplay between proceedings in cases numbered 13-I-01 and 13-N-04. Local 36, International Association Firefighters, AFL-CIO (“Union”) filed a response, opposing the Motion.

Background

On November 8, 2012, the Union filed a notice of impasse averring that the Union and the Agency had reached an impasse concerning compensation and non-compensation negotiations for a successor collective bargaining agreement. This matter was assigned case number 13-I-01. On November 13, 2012, the Director determined that the parties had reached an impasse and appointed a mediator. On March 5, 2013, the negotiator for the Agency sent the Union a letter asserting the nonnegotiability of proposals made by the Union. On April 3, 2013, the mediator informed the Director that mediation had not completely resolved the impasse. The next day the Union filed a negotiability appeal, PERB Case No. 13-N-04, seeking a determination of the negotiability of thirteen proposals that the Agency had asserted were nonnegotiable. On May 17, 2013, the Director appointed an arbitrator for Case No. 13-I-01 pursuant to D.C. Code section 1-617.17(f). The arbitrator held hearings in November 2013.

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The Board issued a decision and order in Case No. 13-N-04, finding all proposals except Proposal 12 and Proposal 13 to be negotiable. *Local 36, Int'l Ass'n of Firefighters v. D.C. Dep't of Fire & Emergency Med. Servs.*, 60 D.C. Reg. 17359, Slip Op. No. 1445, PERB Case No. 13-N-04 (2013). The Union filed a motion for reconsideration with respect to the proposals found nonnegotiable.

In a conference call with the arbitrator, counsel for the Agency asserted that the Board's decision deprived the arbitrator of jurisdiction to address Proposal 13, a proposal regarding the work week and work schedule of firefighters. The Union disagreed and pointed out that its motion for reconsideration meant that the Board's decision was not final. Subsequent conference calls failed to resolve the dispute. On December 27, 2013, the arbitrator sent an e-mail summarizing a conference call that day and stating,

I noted my strong preference for the LBFOs to include a proposal on the "platooning" issue [Proposal 13] that was in the format of an "asterisked" proposal. By doing so, all of the possible eventualities will be covered. If the subject matter is ultimately found after all appeals have been exhausted to be non-negotiable, then any language on the subject will lapse by its terms since by agreeing to the asterisked approach the District has not waived its non-negotiability position.

(Motion Ex. C. at 1). The e-mail states that the date for briefing is January 17, 2014.

The Agency filed the Motion in question on January 7, 2014. The Agency maintains that the procedure contemplated by the arbitrator to issue a provisional ruling on an "asterisked" proposal that the Board already held nonnegotiable usurps the Board's jurisdiction and would result in confusion and needless litigation. (Motion 7, 8). For example, the Agency suggests that an unfair labor practice case will likely arise if the interest award includes Proposal 13 and the Agency fails to comply with that portion of the award. (Motion 7).

In response, the Union asserts that the request is unprecedented and should be denied. The Union denies that the arbitrator is usurping the Board's jurisdiction as the arbitrator is not deciding the negotiability question. To the Agency's claim that a stay would prevent needless litigation, the Union replies that such litigation is theoretical and speculative. The Union proposes a speculative harm of its own: "a 'do-over' if, in the future, PERB's negotiability determination is reversed." (Response 8-9).

In surrebuttal to the Union's claim that the request is unprecedented, the Agency filed a reply in which it argues that the present case is "wholly analogous" to *Patent Office Professional Association v. Federal Labor Relations Authority*, 26 F.3d 1148 (D.C. Cir. 1994). In that case the court held that an interest arbitrator did not have jurisdiction to consider proposals which the parties had neither negotiated nor reached an impasse. *Id.* at 1153-54. The Agency contends

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that there is no impasse over Proposal 13 because the Agency refused to bargain over it and, as a result, the arbitrator has no jurisdiction to consider Proposal 13, provisionally or otherwise.

Discussion

Board Rule 532.1 states: "Except when otherwise ordered by the Board in it[s] discretion, impasse proceedings shall not be suspended pending the Board's determination of a negotiability appeal." The circumstances of this case do not present sufficient grounds for the Board to exercise its discretion to suspend impasse proceedings pending the Board's determination of the Union's negotiability appeal. The arbitrator's stated preference for arbitrating the issue provisionally, without claiming to decide the negotiability issue, is not an unreasonable approach. An award regarding Proposal 13 can be excised or lapse by its own terms if it conflicts with the final determination of the negotiability appeal.

The Agency's jurisdictional argument does not necessitate exercise of the Board's discretion to suspend the impasse proceedings. The case of *Patent Office Professional Association v. Federal Labor Relations Authority*, 26 F.3d 1148 (D.C. Cir. 1994), is distinguishable. In that case, an interest arbitrator issued an award on all disputed proposals before him except those related to performance appraisal. The union then submitted new proposals on performance appraisal. The arbitrator, over the objections of the agency, proceeded to consider the new proposals and issued an award that included several of them. *Id.* at 1150-51. The court held that before an interest arbitrator can exercise any power there must first be an impasse. The requisite impasse on the new proposals was absent because the parties had never bargained over them. *Id.* at 1153. In contrast, the parties to the present case bargained over all of the Union's proposals including Proposal 13. The notice of impasse stated that the parties had failed to reach settlement on "hours of work/schedule/leave." (Notice of Impasse ¶ 2). The Union's proposals attached to the notice of impasse included Proposal 13. (Notice of Impasse Ex. 1). The Agency did not assert the nonnegotiability of the Union's proposals, including Proposal 13, until after the impasse was declared and a mediator appointed.

In connection with the lack of jurisdiction, *Patent Office* does refer to the agency's claim of nonnegotiability in that case but only as the cause of the failure to negotiate. The court stated, "So long as these negotiability issues remained unresolved, coupled with the parties' resulting failure to negotiate over the merits of the proposals, there could be no impasse on the merits." 26 F.3d at 1153 n.2. In the present case, the negotiability issues are not coupled with a resulting failure to negotiate over the merits of the proposal. Accordingly, the arbitrator has not lost the jurisdiction conferred on him when he was appointed.

For the foregoing reasons, the Motion is denied.

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ORDER

IT IS HEREBY ORDERED THAT:

1. The D.C. Department of Fire and Emergency Medical Services' Motion 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

Washington, D.C.

February 25, 2014

Decision and Order
PERB Case No. 13-I-01
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CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 13-I-01 was transmitted via File & ServeXpress to the following parties on this the 25th day of February, 2014.

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VIA FILE & SERVEXPRESS

Kevin M. Stokes
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VIA FILE & SERVEXPRESS



Adessa Barker
Administrative Assistant

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**Government of the District of Columbia
Public Employee Relations Board**

<hr/>)	
In the Matter of:)	
)	
American Federation of)	
Government Employees, Local 2978,)	
)	PERB Case No. 08-U-47
Complainant,)	
)	Opinion No. 1454
v.)	
)	
District of Columbia)	
Department of Health,)	
)	
Respondent.)	
<hr/>)	

DECISION AND ORDER

I. Statement of the Case

Complainant American Federation of Government Employees, Local 2978 (“Union” or “AFGE”) filed an Unfair Labor Practice Complaint (“Complaint”) against Respondent District of Columbia Department of Health (“Agency” or “DOH”) for alleged violations of sections 1-617.04(a)(1), (3), and (5) of the Comprehensive Merit Personnel Act (“CMPA”) by converting AFGE President Robert Mayfield from career status to term status, and subsequently terminating his employment. The matter was submitted to an unfair labor practice hearing, and in Slip Op. No. 1256, the Board adopted the Hearing Examiner’s conclusion that the Agency committed an unfair labor practice, and ordered the Agency to reinstate Mr. Mayfield. (Slip Op. No. 1256 at p. 11-12). Additionally, the Board instructed the Union to submit “a verified statement as to the appropriate amount for a make whole remedy, i.e. back pay.” *Id.* at 12. The Agency was instructed to provide a response to the verified statement, at which point the Board would issue a supplemental order ruling on the appropriate remedy. *Id.*

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In subsequent exchanges between the parties, the Union and Agency disagreed over interest on the back pay award, and the manner in which annual leave hours must be restored to Mr. Mayfield. On October 31, 2013, the Board issued Slip Op. No. 1443, ordering the parties to brief the following issues: (1) whether the Agency must pay interest on Mr. Mayfield's back pay award, and if so, at what rate; and (2) whether Mr. Mayfield's accrued annual leave must be restored via "restored hours" or as a lump sum payout? Pursuant to the briefing schedule outlined in Slip Op. No. 1443, the Union's brief ("Union Brief") was filed on November 27, 2013, and the Agency's Amended Reply Brief ("Amended Agency Brief") was filed on December 30, 2013.

II. Discussion

A. Interest on the back pay award

a. Union's position

In its brief, AFGE asserts that Mr. Mayfield is entitled to interest on his back pay award at a rate of 4% per annum on a biweekly basis.¹ (Union Brief at 5-6). In support of this contention, AFGE cites to *University of the District of Columbia Faculty Ass'n/NEA v. University of the District of Columbia*, 39 D.C. Reg. 8594, Slip Op. No. 285, PERB Case No. 86-U-16 (1992), in which the Board held: "The D.C. Superior Court has held that an 'award requiring [that]...employee[s] be given back pay for a specific period of time establishes...a liquidated debt' and therefore is subject to the provisions of D.C. Code Sec. 15-108, which provides for prejudgment interest on liquidated debts at the rate of four percent (4%) per annum." (Union Brief at 5). AFGE alleges that an order directing back pay "expressly and specifically includes 'prejudgment interest' as part of [the Board's] make-whole remedy." (Union Brief at 5; citing *Washington Teachers' Union, Local 6 v. District of Columbia Public Schools*, 59 D.C. Reg. 3463, Slip Op. No. 848, PERB Case No. 05-U-18 (2006)).

Additionally, AFGE states that the Agency "apparently takes the position that Mr. Mayfield is not entitled to interest because the [Board's] decision and order of March 27, 2012, did not explicitly require interest," and calls this position "wholly without merit." (Union Brief at 6). The Union contends that the Board routinely orders interest on back pay awards, and that awarding interest upholds "the spirit and the letter" of the Board's order in Slip Op. No. 1256. *Id.*

b. Agency's position

The Agency contends that the language of the Board's order in Slip Op. No. 1256 precludes the payment of interest on the back pay award because it specifically referenced "a make whole remedy, i.e. back pay." (Amended Agency Brief at 2). The Agency asserts that the phrase "i.e.," defined as "that is," is a "limiting phrase and necessitates that whatever language is included with this phrase means precisely that and nothing more." *Id.* Further, the Agency

¹ The Union utilized the following formula to calculate simple interest on the back pay award, minus offsets: (principal) x (annual rate) x (years since payment due), totaling \$16,385.34. (Union Brief at 6).

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argues that if the Board had intended for interest to be paid on this back pay, it would have specifically provided for it in Slip Op. No. 1256. (Amended Agency Brief at 3).

Should the Board choose to award interest on the back pay award, the Agency disputes the Union's calculation of the interest on a biweekly, instead of per annum, basis. (Amended Agency Brief at 3). The Agency cites to D.C. Code § 28-3302(b), which states: "Interest, when authorized by law, on judgments or decrees against the District of Columbia, or its officers, or its employees acting within the scope of their employment, is at the rate of not exceeding 4% per annum." (Amended Agency Brief at 3). Thus, the Agency contends that any interest on Mr. Mayfield's back pay award should be calculated on a per annum basis at 4% for the years 2008, 2009, 2010, 2011, and 2012, totaling \$6,675.62. (Amended Agency Brief at 3-4).

Finally, the Agency alleges that "there is a sizeable period of time for which Complainant has included payments to Mr. Mayfield for both outside work and unemployment benefits at the same time." (Amended Agency Brief at 4). Specifically, the Agency points to calculations submitted by the Union in its Brief which contain simultaneous entries for payments to Mr. Mayfield for both W-2 Offsets and Unemployment Compensation Offsets. (Amended Agency Brief at 4; citing Union Brief Exhibit 1, pp. 3-6). According to the Agency, the simultaneous payments "further skews whatever calculations Complainant has arrived at with respect to any interest it believes should be paid to Mr. Mayfield for his back pay award." (Amended Agency Brief at 4). The Agency further notes that it is an "open question" as to whether Mr. Mayfield simultaneously claimed unemployment insurance benefits while employed full time, which would be "improper and, possibly, a crime." *Id.* at fn. 4.

c. Analysis

The CMPA confers upon the Board the remedial authority to "reinstate, with or without back pay, or otherwise make whole, the employment or tenure of any employee, who the Board finds has suffered adverse economic effects" in violation of the Labor-Management Relations subchapter of the CMPA. *See* D.C. Code § 1-617.13(a). In considering whether the Board may award interest as a part of its authority to "make whole" employees who have suffered adverse economic effects, the Board adheres to D.C. Superior Court precedent stating that "an award requiring...employee[s] to be given back pay for a specific period of time establishes...a liquidated debt," and therefore is subject to the provisions of D.C. Code § 15-108, which provides for prejudgment interest on liquidated debts at the rate of 4% per annum. *University of the District of Columbia Faculty Ass'n/NEA*, Slip Op. No. 285 at p. 17 (citing *American Federation of Government Employees, Local 3721 v. District of Columbia Fire Dep't*, 36 D.C. Reg. 7857, Slip Op. No. 202, PERB Case No. 88-U-25 (1989) and *American Federation of State, County and Municipal Employees v. District of Columbia Board of Education*, D.C. Superior Court Misc. Nos. 65-86 and 93-86, decided Aug. 22, 1986, reported at 114 Wash. Law Reporter 2113 (Oct. 15, 1986)). Additionally, D.C. Code § 28-3302(b) provides: "Interest, when authorized by law, on judgments or decrees acting against the District of Columbia, or its officers, or its employees acting within the scope of their employment, is at a rate of not exceeding 4% per annum." *See D.C. Dep't of Corrections v. Fraternal Order of Police/Dep't of Corrections Labor Committee*, 59 D.C. Reg. 6493, Slip Op. No. 1105, PERB Case No. 07-E-02

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(2011)². Further, orders directing back pay “expressly and specifically” include prejudgment interest as a part of the Board’s make whole remedy. *University of the District of Columbia Faculty Ass’n/NEA v. University of the District of Columbia*, 41 D.C. Reg. 1914, Slip Op. No. 307 at p. 2, PERB Case No. 86-U-16 (1992); *see also American Federation of Government Employees, Local 2725 v. D.C. Dep’t of Health*, 59 D.C. Reg. 4627, Slip Op. No. 945 at p. 4, PERB Case No. 08-U-08 (2009). Accordingly, the Board finds no merit to the Agency’s allegations that the back pay award in Slip Op. No. 1256 should not include interest.

Regarding the Agency’s concerns related to the legitimacy of Mr. Mayfield’s offsets, the Board lacks jurisdiction over allegations that criminal activity has occurred, and thus will not address the Agency’s allegation that “[t]here is an open question as to whether or not Mr. Mayfield was simultaneously claiming unemployment insurance benefits while employed full-time.” (Amended Agency Brief at 4, fn. 7).

The Agency will submit a memorandum to the D.C. Office of Pay and Retirement Services, requesting the calculation and payment of interest on Mr. Mayfield’s back pay award.

B. Restored annual leave

a. Union’s position

AFGE asserts that Mr. Mayfield accrued 679 hours of annual leave during the period he was unemployed due to the Agency’s unlawful actions, were restored to his annual leave account as accrued leave. (Union Brief at 7). The District maintains a “use or lose” policy, which provides that any annual leave hours in excess of 240 hours that have not been used by the end of a year are forfeit. *Id.*, citing D.C. Personnel Manual §§ 1238.1 and 1238.2. AFGE contends that it would “obviously be impossible” for Mr. Mayfield to use the accrued leave during the course of one year, particularly as he will be accruing additional hours of leave during that year. (Union Brief at 7). Instead, the Union requests that the accrued leave be paid out via a lump-sum payment, which it calculates as a cash value of \$22,976.15. (Union Brief at 8). The Union cites *Doctors’ Council of D.C. v. D.C. Dep’t of Youth Rehabilitation Services*, 59 D.C. Reg. 3554, Slip Op. No. 884, PERB Case No. 07-U-19 (2007) in support of its argument that a lump-sum payment has been sanctioned by the Board as part of a make-whole remedy. (Union Brief at 7).

b. Agency’s position

The Agency contends that a lump-sum payout is not appropriate in this case because Mr. Mayfield has had “ample opportunity to utilize his restored leave.” (Amended Agency Brief at

² D.C. Code § 28-3302 pertains to commercial transactions, but the D.C. Court of Appeals has found that the statute is not limited to commercial instruments and transactions. *See American Federation of Government Employees, Local 3721 v. D.C. Fire Dep’t*, 36 D.C. Reg. 434, Slip Op. No. 202 at p. 3, PERB Case No. 88-U-25 (Noting that the statute has previously been applied to a negligence suit against the District of Columbia, *District of Columbia v. Mitchell*, 533 A.2d 629 (D.C. Ct. App. 1987); a tax refund action, *Andrews v. District of Columbia*, 443 A.2d 566, 570-71 (D.C. Ct. App. 1982); and an employment discrimination judgment (*King v. Palmer*, 641 F. Supp. 186, 188 (D.D.C. 1986)).

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5). The Agency points to District Personnel Manual § 1239.2, which permits employees up to two years to use restored leave. *Id.* The Agency alleges that Mr. Mayfield has not attempted to use any of his restored leave:

He used no restored leave at all in 2013, the first two years he could do so, according to the [District Personnel Manual]. According to agency records, he used 214 hours of annual leave in calendar year 2013 from his regular annual leave bank, in addition to 171 hours of sick leave, for a total of 385 hours of leave in 2013. His current annual leave balance is 170 hours, therefore Mr. Mayfield could have used at least 70 hours of his restored leave in 2013 and still not have exceeded the maximum number of 240 hours of use-or lose leave. Moreover, the agency has made it clear at all material times that it was and is not opposed to him utilizing his restored leave.

(Amended Agency Brief at 6) (emphasis in original). The Agency asserts that Mr. Mayfield's failure to attempt to use his restored leave "should be construed as an effort to seek a payout without ever even attempting to use this leave before it expires," and is a "subterfuge which should not be rewarded." *Id.* at n. 8. The Agency distinguishes *Doctors' Council*, Slip Op. No. 884, from the instant case, arguing that in *Doctors' Council* there was an express agreement between the parties that the agency would pay the employee's accrued leave in a lump-sum payment, while no such agreement exists in the instant case. (Agency Brief at 6-7).

Additionally, the Agency disagrees with the method used by the Union to calculate Mr. Mayfield's total accrued leave: "[I]nstead of simply including the actual accrued leave that Mr. Mayfield lost over the time that he was terminated, the Union has added in the 240 hours that would go into Mr. Mayfield's use or lose account, thereby falsely inflating the overall total of accrual hours he would be paid by 240." (Amended Agency Brief at 7). Finally, the Agency asserts that the total number of annual leave hours restored was 676, not the 679 referred to in the Union's Brief. *Id.* at n. 10.

c. Analysis

In *Doctors' Council*, the parties entered into a settlement agreement that resolved a grievance filed by the union on behalf of a bargaining unit member. Slip Op. No. 884 at 1. Pursuant to the terms of the settlement agreement, the agency agreed to pay the grievant for 92 hours of accrued annual leave, "paid out in accordance with the District's personnel regulations." *Id.* at 2. When it determined that the agency had failed to comply with the terms of the settlement agreement, the Board ordered the agency to make the agreed-upon payments. *Id.* at 5. In the instant case, the requirement to restore Mr. Mayfield's annual leave comes not from a negotiated settlement agreement, but from the Board's order of a "make whole" remedy following an unfair labor practice hearing. Slip Op. No. 1256 at p. 11-12. The Union has cited no cases in which the Board has *sua sponte* ordered a lump-sum payout for restored annual leave hours, nor is the Board aware of such precedent.

In the chapter of the D.C. Municipal Regulations pertaining to back pay for District personnel, 6-B DCMR § 1149.2 provides:

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An employee who, on the basis of a timely appeal of an administrative determination is found, by appropriate authority under applicable law, rule, regulation, or collective bargaining agreement, to have undergone an unjustified or unwarranted personnel action resulting in the withdrawal or reduction of all or part of an employee's pay or benefits, shall be entitled, on correction of the personnel action, to back pay under this section.

The definition of "pay" in 6-B DCMR § 1149.1 expressly includes annual leave. However, nothing in 6-B DCMR § 1149 requires that annual leave be restored as a lump-sum payout, rather than as restored leave. Absent any requirement to the contrary, the Board must deny the Union's request that Mr. Mayfield's accrued annual leave be restored as a lump-sum payout.

ORDER

IT IS HEREBY ORDERED THAT:

1. The D.C. Dep't of Health shall pay Mr. Robert Mayfield interest on his back pay award at a rate of four percent (4%) per annum.
2. Within ten (10) days from the issuance of this Decision and Order, the D.C. Dep't of Health will submit a memorandum to the D.C. Office of Pay and Retirement Services, requesting the calculation and payment of interest on Mr. Mayfield's back pay award.
3. The American Federation of Government Employees, Local 2978's request for a lump sum payout for Mr. Mayfield's accrued leave hours is denied.
4. 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.

February 25, 2014

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 08-U-47 was transmitted via File & ServeXpress to the following parties on this the 25th day of February, 2014.

Ms. Nancy B. Stone, Esq.
Woodley & McGillivray
1101 Vermont Ave., NW
Ste. 1000
Washington, DC 20005

FILE & SERVEXPRESS

Mr. Andrew Gerst, Esq.
DC OLRCB
441 4th St., NW
Ste. 820 North
Washington, D.C. 20001

FILE & SERVEXPRESS

/s/ Erin E. Wilcox

Erin E. Wilcox, Esq.
Attorney-Advisor

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:)	
)	
Alliance of Independent Workers)	
Labor Organization,)	
)	PERB Case No. 14-CU-01
and)	
)	Opinion No. 1455
District of Columbia Office of the)	
Chief Medical Examiner,)	
)	
Petitioners.)	
_____)	

DECISION AND ORDER ON COMPENSATION UNIT DETERMINATION

On October 29, 2013, the Alliance of Independent Workers Labor Organization (“AIWLO”) and the District of Columbia Office of the Chief Medical Examiner (“OCME”) (collectively “Petitioners”) filed a Joint Petition for Compensation Unit Determination (“Petition”) with the Board to designate Compensation Unit 1¹ as the appropriate compensation unit for a bargaining unit in OCME that is represented by AIWLO. On November 11, 2013, a deficiency letter was sent to the Petitioners. On November 27, 2013, the Petitioners filed a Supplement to Joint Petition for Compensation Unit Determination, curing the deficiencies. Pursuant to Board Rule 503.4, OCME posted the required notice for fifteen (15) consecutive days. No comments to the notice were received by the Board.

¹ Labor organizations are initially certified by the Board under the Comprehensive Merit Personnel Act (“CMPA”) to represent units of employees that have been determined to be appropriate for the purpose of non-compensation terms-and-conditions bargaining. Once this determination is made, the Board then determines the compensation unit in which these employees should be placed. Unlike the determination of a terms-and-conditions unit, which is governed by criteria set forth under D.C. Code § 1-617.09, unit placement for purpose of authorizing collective bargaining over compensation is governed by D.C. Code § 1-617.16(b).

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PERB Case No. 14-CU-01
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AIWLO is the certified exclusive bargaining representative for:

All nonprofessional employees employed by the District of Columbia Office of the Chief Medical Examiner, excluding maintenance mechanics, all management officials, supervisors, confidential employees, or any employees engaged in work in other than a purely clerical capacity, and employees engaged in administering the provisions of Title XVII of the District of Columbia Comprehensive Merit Personnel Act of 1978, D.C. Law 21139.

PERB Case No. 10-RC-03, Certification No. 153 (September 2, 2011).

The Board authorizes compensation units pursuant to D.C. Code § 1-617.16(b), which provides:

In determining an appropriate bargaining unit for negotiations concerning compensation, the Board shall authorize broad units of occupational groups so as to minimize the number of different pay systems or schemes. The Board may authorize bargaining by multiple employers or employee groups as may be appropriate.

The Board recognizes a two-part test from this provision to determine an appropriate compensation unit: (1) the employees of the proposed unit comprise broad occupational groups; and (2) the proposed unit minimizes the number of different pay systems or schemes. *AFSCME, D.C. Council 20, Local 2401 v. D.C. Pub. Schs.*, 59 D.C. Reg. 4954, Slip Op. No. 962 at p. 3, PERB Case No. 08-CU-01 (2009).

According to Petitioners, the proposed group of employees consists of a broad range of occupational groups, including Program Analyst, Support Services Specialist; Lead Records Management Specialist; Records Management Specialist; Staff Assistant; Intake Assistant; Autopsy Assistant (Mortuary); IT Specialist (Customer Support); and Medical Transcriptionist. (Amended Petition at 2); thus, satisfying the first part of the aforesaid test.

Petitioners further assert that all of the employees are Career Service employees and on the District Service pay, retirement, and compensation system. Placement of the employees in Compensation Unit 1 does not increase the number of different pay systems or schemes; therefore, satisfying part two of the aforementioned test.

For the foregoing reasons, the Board grants the Joint Petition for Compensation Unit Determination and places the above-referenced bargaining unit in Compensation Unit 1.

Decision and Order
PERB Case No. 14-CU-01
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ORDER

IT IS HEREBY ORDERED THAT:

1. The Petitioners' "Amended Joint Petition for Compensation Unit Determination" is granted.
2. The following employees are placed in Compensation Unit 1: All nonprofessional employees employed by the District of Columbia Office of the Chief Medical Examiner, excluding maintenance mechanics, all management officials, supervisors, confidential employees, or any employees engaged in work in other than a purely clerical capacity, and employees engaged in administering the provisions of Title XVII of the District of Columbia Comprehensive Merit Personnel Act of 1978, D.C. Law 21139.
3. 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.

February 25, 2014

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 14-CU-01 was transmitted to the following Parties on the 25th of February, 2014.

J.C. Stamps, Executive Director
Alliance of Independent Workers Labor Union
3150 Monroe Street, NE
Washington, D.C. 20018

via U.S. MAIL

Kevin Stokes
Michael D. Levy
Dean S. Aqui
D.C. Office of Labor Relations and Collective Bargaining
441 4th Street, N.W., Suite 820 North
Washington, D.C. 20001

via File&ServeXpress



Erica J. Balkum
Public Employee Relations Board
1100 4th Street, S.W.
Suite E630
Washington, D.C. 20024
Telephone: (202) 727-1822
Facsimile: (202) 727-9116

**THE DISTRICT OF COLUMBIA COMMISSION ON THE
MARTIN LUTHER KING, JR. HOLIDAY**

NOTICE OF PUBLIC MEETING

**Wednesday, April 2, 2014
200 I Street SE Washington, DC 20001**

The District of Columbia Commission on the Martin Luther King, Jr. Holiday will hold its open public meeting on Wednesday, April 2, 2014 at 1:00 pm in the Offices of the DC Commission on the Arts and Humanities. The Commission will be in attendance to discuss program events being planned for the year.

The regular monthly meetings of the District of Columbia Commission on the Martin Luther King, Jr. Holiday are held in open session on the first Wednesday of the month, except for the month of August. If you have any questions or concerns, please feel free to contact Sharon Anderson at sharond.anderson@dc.gov.

DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT**NOTICE OF FUNDING AVAILABILITY****DSLBD Small Business Improvement Grant**

The Department of Small and Local Business Development (DSLBD) is soliciting applications for the **Small Business Improvement Grant**. DSLBD will award up to seven grants from a fund that totals \$722,000.

The purpose of the Small Business Improvement Grant (the “Program”) is to: 1) support expansion of existing small businesses; 2) increase the District’s tax base; 3) create new jobs for District residents; 4) create opportunities for businesses that are Certified Business Enterprises (CBEs); and 5) encourage businesses to meet Sustainable DC Plan goals.

Eligible applicants are nonprofit organizations or businesses that have economic development or business development as part of their core mission. For additional eligibility requirements and exclusions, please review the Request for Application (RFA) when it is posted.

The **Service Areas** are:

- **12th Street NE** — 12th Street NE from Rhode Island Avenue NE to Michigan Avenue, NE
- **Logan Circle/U Street** — U Street NW from 9th Street, NW to 18th Street NW; and 9th, 11th, 12th, 13th and 14th Streets NW from Massachusetts Avenue NW to U Street NW
- **North Capitol Street** — North Capitol Street from New York to Rhode Island Avenues
- **Ward 3**
- **Ward 4**
- **Ward 5**
- **Ward 6**

Eligible Use of Funds: Applicants may propose to manage sub-grants or provide technical assistance to small businesses located in the service areas listed above. DSLBD will consider the following types of projects.

1. **Sub-Grants for Capital Improvements** including exterior and interior building improvements. Funds can be used for projects which have been completed, permitted, and inspected after October 1, 2013 or for projects which have not yet begun.
2. **Technical Assistance** through the provision of direct one-on-one consultations in topics that would benefit small business operators, including but not limited to: bookkeeping, digital business strategies, legal assistance, marketing strategies, website improvement, visual merchandising, and green business strategies.
3. **Sub-Grants of Working Capital** of less than \$5,000 to expand business operations including but not limited to: inventory, equipment, point of sales systems, mobile payment

systems, rent for additional space, or other non-fixed improvements to benefit a small business.

Applicants may use grant funds to extend existing grant programs and cover some administrative costs. For additional examples of eligible uses of funds and exclusions, please review the RFA.

If awarded a grant, grantees must begin the project within thirty (30) days of executing the grant agreement and complete funded projects within six (6) months.

Application Process: Interested applicants must complete an online application and submit it on or before June 2, 2014 at 4:00PM. DSLBD will not accept applications submitted via hand delivery, mail or courier service. **Late submissions and incomplete applications will not be forwarded to the review panel.** Instructions on how to access the online application will be posted in the RFA.

Selection Process: DSLBD will select grant recipients through a competitive application process. Each application will first be screened by DSLBD for basic eligibility and completeness. All applications deemed eligible and complete will be forwarded to a review panel to be evaluated, scored, and ranked based on the selection criteria listed below.

1. Applicant Demonstrates Previous Relevant Experience (25 points)
2. Financial Viability of Businesses Benefiting from the Grant (25 points)
3. Percentage of Grant Funds Directly Benefitting Individual Businesses (25 points)
4. New Jobs Created for District Residents (25 points)
5. Percentage of Funds Benefiting CBEs (25 points)
6. Grant Supports Business Growth and Expansion (25 points)
7. Proposed Project Supports Sustainable DC Plan Goals (25 points)
8. Proposed Project Demonstrates Innovation (25 points)

The DSLBD program team will review the panel reviewers' recommendations and the DSLBD Director will make the final determination of grant awards under the Program. DSLBD will determine grant award selection by June 30, 2014.

Award of Grants:

The maximum grant award for an application that serves all six service areas is \$522,000. Applications for individual service areas must conform to the funding allocations for each service area.

- **12th Street NE**, \$152,000; \$25,000 of this fund was provided by Monroe Street Market through Bozzuto Development and Abdo Development;
- **Logan Circle/U Street**, \$70,000;
- **North Capitol Street**, \$200,000
- **Ward 3**, \$50,000;
- **Ward 4**, \$100,000;
- **Ward 5**, \$100,000; and
- **Ward 6**, \$50,000.

The **Request for Application** (RFA) will be available by April 11, 2014 at www.dslbd.dc.gov.

DSLBD will host a **Pre-Submission Meeting** on April 23, 2014 at 1:30 p.m. The location of the meeting will be 441 4th Street, NW, Suite 805.

For more information, contact Lauren Adkins or Camille Nixon at the Department of Small and Local Business Development at lauren.adkins@dc.gov or camille.nixon@dc.gov.

DSLBD reserves the right to issue addenda and/or amendments subsequent to the issuance of the NOFA or RFA, or to rescind the NOFA or RFA.

WASHINGTON YU YING PCS
REQUEST FOR PROPOSALS

Chromebooks

Washington Yu Ying Public Charter School is seeking competitive bids for the purchase of approximately 120 Google Chromebooks with Google Console Management. The exact quantity is subject to change. Proposals should include costs per unit. Chromebooks should be from a reputable manufacturer (Samsung, Acer, etc.) and meet certain minimum specifications detailed below:

- Capable of running OS 33 or higher
- Minimum 2GB RAM
- Minimum 16GB Solid State Drive
- Capable of wireless and wired network connectivity
- Minimum 9.7" screen size
- Minimum 1024x768 screen resolution
- Keyboard
- Mouse/Touchpad

Please send proposals to Brian, at RFP@washingtoneyuying.org. Proposals must be received no later than the close of business on Thursday, April 14th, 2014.

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) will be holding a meeting on Thursday, April 3, 2014 at 9:30 a.m. The meeting will be held in the Board Room (4th floor) at 5000 Overlook Avenue, S.W., Washington, D.C. 20032. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water's website at www.dewater.com.

For additional information, please contact Linda R. Manley, Board Secretary at (202) 787-2332 or linda.manley@dewater.com.

DRAFT AGENDA

- | | | |
|----|---|-----------------------|
| 1. | Call to Order | Board Chairman |
| 2. | Roll Call | Board Secretary |
| 3. | Approval of March 6, 2014 Meeting Minutes | Board Chairman |
| 4. | Committee Reports | Committee Chairperson |
| 5. | General Manager's Report | General Manager |
| 6. | Action Items
Joint-Use
Non Joint-Use | Board Chairman |
| 7. | Other Business | Board Chairman |
| 8. | Adjournment | Board Chairman |

OFFICE ON WOMEN'S POLICY AND INITIATIVES
DISTRICT OF COLUMBIA COMMISSION FOR WOMEN

NOTICE OF PUBLIC MEETING

Thursday, April 3, 2014
6:45 PM – 8:45 PM

John A. Wilson Building
1350 Pennsylvania Avenue, NW
Room 301
Washington, DC 20004

The District of Columbia Commission for Women will hold its monthly meeting on Thursday, April 3, 2014 at 6:45 p.m. The meeting will be held at the John A. Wilson Building, 1350 Pennsylvania Avenue, NW, Room 301, Washington, DC 20004.

For additional information, please contact Terese Lowery, Executive Director at (202) 724-7690 or women@dc.gov.

DRAFT AGENDA

- I. Call to Order
- II. Debrief from the 'Washington Women of Excellence Awards'
- III. Discussion of Protocol and Objectives for Citywide Listening Sessions
- IV. Discussion of Fall Policy Conference for District Women
- V. Questions, Comments and Concerns
- VI. Adjournment

Please note that this is a draft agenda and subject to change.

**GOVERNMENT OF THE DISTRICT 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 3/18/14, the Board of Zoning Adjustment voted 3-0-2, to hold closed meetings telephonically on Monday, March 31, April 14, and 28, 2014, 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 April 1, 14, and 29, 2014; and in accordance with § 407 of the District of Columbia Administrative Procedure Act, the Board will hold a closed meeting on Tuesday, April 8, 2014, at 9:30 a.m. for the purpose of conducting internal training, pursuant to § 405(b)(12) of the Open Meetings Amendment Act of 2010, following which will be a closed meeting for the purpose of obtaining legal advice from counsel and to deliberate upon, but not voting on Appeal Number 17109, as permitted by Sections 405(b)(4) and (b)(13) of the Act.

FOR FURTHER INFORMATION, CONTACT THE OFFICE OF ZONING AT (202) 727-6311.

LLOYD J. JORDAN, CHAIRMAN, S. KATHRYN ALLEN, MARNIQUE Y. HEATH, 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.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 18613 of Continental Mortgage and Investment Corp., pursuant to 11 DCMR § 3103.2, for a variance from the height and story limitations under § 400.1, and a variance from the nonconforming structure requirements under § 2001.3, to allow the renovation of and fourth floor additions to two apartment buildings in the R-3 District at premises 11 50th Street, S.E. and 4945 Ayers Street, S.E. (Square 5331, Lots 32 and 33).

HEARING DATES: September 24, October 8, and December 3, 2013, and
February 11, and March 18, 2014¹

DECISION DATE: March 18, 2014

SUMMARY ORDER

SELF CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 5.)

The Board of Zoning Adjustment (the "Board") provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 7E, and to owners of property within 200 feet of the site. The site is located within the jurisdiction of ANC 7E, which is automatically a party to this application. The ANC did not appear at the hearing, nor did it submit a report. However, the Applicant testified that it had presented its project to the ANC at its monthly meeting on March 11, 2014, and that the ANC with a quorum present had voted unanimously in support of the application.² The Office of Planning ("OP") submitted a timely report in support of the application. (Exhibit 25.) The District Department of Transportation ("DDOT") submitted a report raising no objection to the approval of the application. (Exhibit 23.)

As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for a variance under § 3103.2 from the height and story limitations under § 400.1, and a variance from the nonconforming structure requirements under § 2001.3, to allow the renovation of and fourth floor additions to two apartment buildings in the R-3 District. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

¹ The case was continued from the public hearings of September 24, October 8, and December 3, 2013 and February 11, 2014 at the Applicant's request to allow time for the Applicant to present their case before the ANC and for the ANC to submit its report. (See, Exhibits 33 and 34.)

² The Board gave leave for the ANC to file its resolution for the record.

BZA APPLICATION NO. 18613**PAGE NO. 2**

Based upon the record before the Board and having given great weight to the OP report filed in this case, the Board concludes that in seeking the variance relief that the Applicant has met the burden of proving under 11 DCMR § 3103.2, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirements of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that the application is hereby **GRANTED, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 9.**

VOTE: **3-0-2** (Lloyd J. Jordan, Marnique Y. Heath, and Jeffrey L. Hinkle to APPROVE; S. Kathryn Allen, not present or voting; no Zoning Commission member present.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: March 21, 2014

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO § 3129.9, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION

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THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: 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, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 18648 of LHO Washington Hotel Four LLC, pursuant to 11 DCMR § 3103.2, for variances from the FAR limitations under § 402.4 and from the prohibition under § 350.4(e) against the expansion of gross floor area or the increase in function or meeting space within a hotel existing on or before May 16, 1980, in the R-5-E District at premises 1430 Rhode Island Avenue, N.W. (Square 211, Lot 858).

HEARING DATE: November 5, 2013

DECISION DATE: December 3, 2013

DECISION AND ORDER

LHO Washington Hotel Four LLC (the "Applicant"), the owner of the subject property, submitted this self-certified application on August 8, 2013, seeking a variance from § 350.4(e) of the Zoning Regulations to permit the construction of a small addition to the Helix Hotel, consistent with BZA Application No. 17672, in which the Board approved an area variance from 11 DCMR § 350.4(e) in 2008 for the same addition requested by the Applicant in this case. The application was amended at the hearing to include a variance from the floor area ratio limitations in the R-5-E District for hotels under 11 DCMR § 402.4. Following a public hearing and public meeting, the Board voted on December 3, 2013, to approve the application, subject to conditions.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated August 9, 2013, the Office of Zoning provided notice of the application to the Office of Planning ("OP"); the District Department of Transportation ("DDOT"); the Councilmember for Ward 2; Advisory Neighborhood Commission ("ANC") 2F, the ANC in which the subject property is located; and Single Member District/ANC 2F03. Pursuant to 11 DCMR § 3112.14, on August 29, 2013, the Office of Zoning mailed letters providing notice of the hearing to the Applicant, ANC 2F, and the owners of all property within 200 feet of the subject property. Notice was published in the *D.C. Register* on August 30, 2013 (60 DCR 12378).

Party Status. In addition to the Applicant, ANC 2F was automatically a party in this proceeding. The Board granted a request for party status in opposition to the application submitted by Jeffrey Dzieweczynski. (Exhibit 24.) Mr. Dzieweczynski lives at 1422 Rhode Island Avenue, N.W., which is located directly to the east of the subject property.

Applicant's Case. The Applicant provided evidence and testimony from Joanna Zook, Vice President of Asset Management of LaSalle Hotel Properties, which is affiliated with the Applicant; and Gene Weissman, the architect of the Applicant. They described the Applicant's

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plans to construct a one-story addition to the Helix Hotel to be used for functions and meetings, and asserted that the application satisfied all requirements for approval of the requested zoning relief.

OP Report. By memorandum dated October 29, 2013, OP recommended approval of the application. (Exhibit 30.)

DDOT Report. By memorandum dated October 29, 2013, DDOT indicated no objection to the application. According to DDOT, the proposed project will have no adverse impacts on the travel conditions of the District's transportation network. DDOT noted that three parking spaces in the landscaped public space area will be eliminated, which is consistent with the public parking area that is intended for open space and landscaping. DDOT recommended that the Applicant: (i) plant a tree in the proposed landscaped area at the front of the building where three existing parking spaces are currently located; (ii) pave the adjoining sidewalk that runs between the driveway's ingress and egress to indicate to drivers that they are crossing a pedestrian pathway; and (iii) install a new tree box on the sidewalk west of the driveway's ingress. (Exhibit 29.)

ANC Report. By memorandum dated August 30, 2013, ANC 2F indicated that, at a regular public meeting held July 10, 2013, with a quorum present, the ANC voted 7-0-1 to support the area variance to expand the gross floor area of the Helix Hotel for function or meeting space. According to the ANC, the project was fully consistent with the same variance request approved by the Board in 2008, BZA Application No. 17672. (Exhibit 23.)

Persons in Support. The Board received letters in support of the application which generally stated that the proposed addition would not adversely affect properties in its immediate vicinity, and would not create additional traffic congestion, noise, or other objectionable conditions, but would contribute to the vitality of the area.

Persons and Party in Opposition. The Board received letters and heard testimony in opposition to the application from the party in opposition and several other persons living in the vicinity of the subject property. The party in opposition generally contended that the addition would significantly increase noise in the neighborhood, particularly at night, and would lead to more traffic congestion, due to cars dropping off guests and restaurant patrons, and increased backups on the sidewalk, due to delivery trucks and tour buses.

FINDINGS OF FACT

1. The subject property is located at 1430 Rhode Island Avenue, N.W. (Square 211, Lot 858). The lot is midblock on the south side of Rhode Island Avenue between 14th and 15th Streets. The lot is irregularly shaped with a land area of 18,191 square feet. A public alley abuts the property along its rear lot line.
2. The subject property is improved with a high-rise detached building, approximately 89 feet in height, used as a hotel with 179 guest rooms. The building has approximately

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- 109,146 square feet of gross floor area. The first floor of the building contains typical hotel functions, including a reception area, hotel offices, a restaurant, a fitness room, public restrooms, and three small meeting rooms. On the west side of the building there is a summer garden patio for hotel guests and restaurant patrons.
3. The existing building is T-shaped, occupying the entire lot in the rear, then extending toward the front of the property with significant setbacks on either side. The center of the building directly abuts its front property line on Rhode Island Avenue, with deep side courts measuring 25 feet in width and 93 feet, two inches in length. The rear yard has an irregular configuration, with three separate sides abutting the public alley. The open court on the east side of the building is partially landscaped and includes some mechanical equipment.
 4. To the front of the building is a circular driveway with a covered area for pick-up and drop-off. There are three existing parking spaces in front of the building beyond the property line that the hotel currently uses for service, delivery, and valet parking operation. A below-grade garage, accessed from the public alley at the rear of the building, provides parking spaces for 33 vehicles.
 5. As currently improved, the subject property has a lot occupancy of 60 percent, where 75 percent is permitted, and a floor area ratio ("FAR") of 6.0, where 6.0 is permitted.
 6. The subject property is zoned R-5-E, which allows hotels existing as of May 16, 1980, as a matter of right. (11 DCMR § 350.4.) The building was originally constructed in 1965 as an apartment house but was later converted to hotel use; thus, the existing building is nonconforming only to the extent that it was converted to a hotel use prior to the change in the Zoning Regulations governing such uses in a residential district. The building is a non-contributing property in the Greater 14th Street Historic District.
 7. Properties in the vicinity of the subject property are also zoned R-5-E. The portion of Rhode Island Avenue in which the subject property is located is characterized by a mix of high-rise apartment houses, hotels, modern condominium buildings, and historic row houses. The area around Logan Circle, and the 14th Street corridor in general, is being redeveloped with a wide variety of high-density commercial, residential, and mixed use buildings.
 8. The hotel's existing meeting spaces are limited in size and configuration due to the building's conversion to hotel use from a residential apartment building that lacked large common areas. The existing meeting rooms cannot be combined into a larger space because of structural constraints relating principally to the columnar structure of the building, which was made of cast-in-place reinforced concrete with column widths ranging from approximately 11 feet to 14 feet from the center. The meeting rooms have low ceilings – the floor-to-ceiling height is approximately eight and a half feet – and thus have poor sight lines and lack of the technological features generally provided in meeting spaces.

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9. The Applicant seeks to construct a one-story addition to the existing building to create a single, flexible meeting room with approximately 1,789 square feet of space. The addition will be located where the northeast court currently exists. It will extend the existing northeast exterior wall out to the eastern property line, aligning with the center portion of the building facing Rhode Island Avenue. The flexible meeting space will be capable of accommodating up to 150 people in a single room with unobstructed floor space. It will be able to serve larger and different types of meetings and functions than the hotel is currently able to host.
10. The proposed addition will add approximately 2,172 square feet of gross floor area to the existing building. The property's lot occupancy will increase from approximately 60 percent to 72.2 percent, and the density will increase from 6.0 FAR to 6.11 FAR.
11. Approximately 1,550 square feet of gross floor area presently used as a passenger drop-off area in front of the building will be converted to interior space comprised of new lobby seating and pre-function areas for the meeting room. The existing smaller meeting rooms at the rear of the building will be reconfigured to accommodate restrooms and a slightly expanded kitchen, which is currently undersized for the restaurant.
12. The addition will be constructed using brushed stainless composite metal panels with vertically butt-glazed windows and brushed stainless metal. The addition's design and materials are in harmony with the stainless steel meshed drapery and stainless metal shingles that adorn the façade of the existing building.
13. The proposed addition will reduce the hotel's impact on the neighborhood in a variety of ways. The addition's expected effect is to change the hotel's primary client demographic from entertainment, tour, and travel guests, to corporate business guests who can utilize the new function space for group meetings and seminars. Expanding the interior lobby to provide new seating and gathering areas will permit patrons to congregate inside the lobby, instead of outside. Finally, converting the existing one-lane driveway to a two-lane driveway will reduce congestion in the street and improve the pedestrian environment along the block.
14. The Applicant shared its plans with a staff member of the Historic Preservation Office ("HPO") of the Office of Planning. The staff member informed the Applicant that no referral to the Historic Preservation Review Board (HPRB") would be needed because the project satisfied the criteria of 10-C DCMR § 319. That provision permits HPO staff to clear building permits for "for minor work not likely to have a significant effect upon the historic character of designated properties" based upon "a determination that proposed work is compatible with the character of the affected historic landmark or historic district." (10-C DC ADC § 319.)
15. The subject property is zoned R-5-E, a General Residence zone district. The R-5-E District is designed to permit flexibility of design by permitting in a single district many types of urban residential development if they conform to the height, density, and area

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requirements established for the districts under Chapter 4 of the Zoning Regulations. The R-5-E Districts also permit the construction of those institutional and semi-public buildings that would be compatible with adjoining residential uses and that are excluded from the more restrictive Residence Districts. (11 DCMR § 350.1.)

16. The building with the proposed addition will satisfy the applicable zoning requirements in all respects except for FAR. The proposed addition will increase the subject property's FAR from 6.0, the maximum permitted in the R-5-E District, to 6.11, or a 1.8 percent increase. However, this increase falls within the two percent flexibility granted to the Zoning Administrator, pursuant to § 2522.1(a) of the Zoning Regulations.

CONCLUSIONS OF LAW

The Applicant requests variances from §§ 402.4 and 350.4(e) of the Zoning Regulations to permit the construction of a one-story addition to the Helix Hotel in the R-5-E Zone District at 1430 Rhode Island Avenue, N.W. (Lot 858, Square 211). The Board is authorized under section 8 of the Zoning Act to grant variances from the strict application of the Zoning Regulations to relieve difficulties or hardship where "by reason of exceptional narrowness, shallowness, or shape of a specific piece of property. . . or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition" of the property, the strict application of the Zoning Regulations would "result in particular and exceptional practical difficulties to or exceptional or undue hardship upon the owner of the property" D.C. Official Code § 6-641.07(g)(3) (2001), 11 DCRM § 3103.2. The "exceptional situation or condition" of a property can arise out of the structures existing on the property itself. *See, e.g., Clerics of St. Viator v. D.C. Board of Zoning Adjustment*, 320 A.2d 291, 293-294 (D.C. 1974). Relief can be granted only "without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map." D.C. Official Code § 6-641.07(g)(3) (2001), (11 DCMR § 3103.2.)

Based on the above findings of fact, and having given great weight to the recommendations of the Office of Planning and the ANC, the Board concludes that the Applicant has satisfied the burden of proof and that the application should be granted.

The subject property faces an exceptional situation or condition arising principally because the building on the subject property was constructed and used as an apartment house prior to its conversion to hotel use, and thus lacks certain features typically found in hotels, such as large common areas. The conversion to hotel use was undertaken as a matter of right, but subsequent amendments to the Zoning Regulations restricted the Applicant's ability to enlarge the hotel building or alter the hotel operation by creating additional meeting spaces within the building. Structural features of the building, especially the limited space between columns and the relatively low ceilings, the irregularly shaped lot, the siting of the building on the lot, and the large side yards, also constrain the Applicant's ability to create a larger meeting space, consistent with the industry standard of high ceilings and unobstructed sight lines, within the existing building.

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The existing building is also uniquely configured. While no side yard is required in the R-5-E District, the building is T-shaped with large side yards. This configuration, combined with the building's existing structural system, limits the ability to combine spaces to accommodate large groups. The building's only existing meeting space is comprised of three separate rooms on the first floor, which together consist of approximately 2,000 square feet of floor area. Because this meeting space was created in the conversion from apartment to hotel use, it is extremely limited in size and configuration, and the column layout restricts the ability to expand this space without also expanding the building's envelope.

The Board concurs with the Applicant that the strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to the Applicant as the owner of the property. Absent the proposed addition, the hotel at the subject property would be unable to create a larger meeting space that the Applicant testified was integral to the successful operation of the hotel.

The Board concludes that the requested variances can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan. Section 350.4 does not freeze all pre-1980 hotels in residential areas as they were, and it does not entirely prohibit changes or reallocations to their space; rather, § 350.4 seeks to protect existing residential neighborhoods by excluding the conversion of residential buildings to hotel uses and by preventing the construction of major conference centers as part of hotel developments. The Helix Hotel existed as a hotel before the restriction in § 350.4 was enacted. Further, the hotel does not seek to become a major conference center or change its existing character or use. The proposed addition is *de minimis*, and will simply allow a permitted use in the R-5-E District to continue. As noted, the proposed construction was considered so minor and compatible with the Greater 14th Street Historic District that no review by HPRB will be required. The Applicant does not anticipate any significant increase in traffic to the subject property as a result of the proposed addition, and the addition will not result in major changes to hotel operations. Due to some of the existing traffic and noise conditions at the hotel, however, the Board concludes that conditions should be imposed on the approval of this application to ensure that nearby neighbors are not adversely affected by any negative traffic or noise that may be created by the reconfigured and slightly expanded space in the hotel.

The Board is required to give "great weight" to the recommendation of OP. (D.C. Official Code § 6-623.04 (2001)). In this case, the Board concurs with OP's recommendation that the application should be approved. The Board is also required to give "great weight" to the issues and concerns raised by the affected ANC. (Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2001)).) In this case, ANC 2F voted to support the application. The ANC did not raise any specific issues or concerns about the proposed zoning relief, but concluded that the Applicant met the standard for the requested variance and was fully consistent with the same variance request approved by the Board in 2008, BZA Application No. 17672.

Based on the findings of fact and conclusions of law, the Board concludes that the Applicant satisfied the burden of proof with respect to the request for a variances to permit the increase

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FAR and in function or meeting space within the existing Helix Hotel in the R-5-E District at 1430 Rhode Island Avenue, N.W. (Square 211, Lot 858).

It is therefore **ORDERED** that the application is hereby **GRANTED, SUBJECT** to the approved Plans – Exhibit 26, Tab D - as revised by condition 1.a. below, and **SUBJECT** to the following **CONDITIONS**:

1. **PARKING CONGESTION:** The Applicant shall:
 - a. Maintain a minimum of two parking spaces on the front of its property for short term use (i.e. less than 15 minutes) for the discharge and pick-up of hotel customers, if approved by DDOT;
 - b. Offer all patrons of events, restaurants, and hotel guests valet parking within its hotel parking garage;
 - c. Require valet parking for any visitor in need of short-term parking (i.e. less than 15 minutes) who cannot be accommodated in the circular drive or at the parking spaces on the street in front of the building; and
 - d. Provide sufficient staff to manage the short-term parking demands and the valet parking operation requirements.
2. **TOUR BUS CONGESTION:** The Applicant shall:
 - a. Include in all contracts and reservations for groups notice that operators and drivers of buses must comply with the District of Columbia traffic regulations prohibiting idling of such buses in public streets for more than ten minutes; and
 - b. Request any bus idling in front of the hotel beyond the ten minute limitation to move from in front of the hotel.
3. **NOISE AND PRIVACY:** The Applicant shall:
 - a. Comply with the government-mandated noise restrictions, including the D.C. Noise Control Act for all events and activities at the hotel;
 - b. Make all operational or architectural improvements necessary to ensure that music, noise, and vibrations from the use of any function space in the hotel, including the summer garden, is not audible above ambient sounds from within residential property owners' premises located in the 1400 block of Rhode Island Avenue, N.W.;
 - c. Not permit live music or disc jockeys on the summer garden, and shall keep all recorded music, if any, at a level that is not audible above ambient sounds from

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within residential property owners' premises located in the 1400 block of Rhode Island Avenue, N.W.; and

- d. Not support or assist any group functions of more than four people in the summer garden.

4. NEIGHBORHOOD COORDINATOR: The Applicant shall:

- a. Designate its hotel general manager as a neighborhood coordinator to receive and address any complaints from adjacent neighbors pertaining to parking, tour bus congestion, or noise resulting from the relief granted by this application;
- b. Require the neighborhood coordinator to provide prompt response (48 hours) to the complainant on how the hotel is mitigating the cause of any complaint; and
- c. Require the neighborhood coordinator to at least annually seek to meet with the ANC to assess the impact of the relief granted on the community, and seek to resolve any substantial negative impact caused by the relief.

VOTE: **4-0-1** (Lloyd J. Jordan, Michael G. Turnbull, S. Kathryn Allen, and Jeffrey L. Hinkle to Approve; one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

The majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: March 18, 2014

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO § 3129.9, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL TOLL OR EXTEND THE TIME PERIOD.

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PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: 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, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 18699 of JK Enterprises Inc., pursuant to 11 DCMR § 3103.2, for variance from the nonconforming structures devoted to conforming uses requirements under subsection 2001.3, to allow a Dry Cleaners, Alteration, Shoe Repair and Pick Up Service in the R-4 District at premises 2712 11th Street, N.W. (Square 2859, Lot 855).¹

HEARING DATE: February 4, 2014
DECISION DATE: March 18, 2014

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application of JK Enterprises Inc. (the “Applicant”) was accompanied by a memorandum, dated September 5, 2013, from the Zoning Administrator (“ZA”). At the Applicant’s request, the ZA provided guidance on the specific zoning relief that would be required from the Board of Zoning Adjustment (“Board” or “BZA”) for the Applicant’s proposal. (Exhibit 8.) Subsequently, the Zoning Administrator submitted a revised memorandum, dated January 16, 2014. (Exhibit 24.)

The Board of Zoning Adjustment (“Board”) provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register*, and by mail to Advisory Neighborhood Commission (“ANC”) 1B and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 1B, which is automatically a party to this application. No letter was received from ANC 1B. The Office of Planning (“OP”) submitted a timely report recommending approval of the application. (Exhibit 27.) The District Department of Transportation (“DDOT”) submitted a letter of “no objection” to the application. (Exhibit 23.)

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case, pursuant to § 3103.2, for a variance from the nonconforming structures devoted to conforming uses requirements under subsection 2001.3. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP report filed in this case, the Board concludes that in seeking a variance from § 2001.3, the applicant has met the burden of proving under 11 DCMR § 3103.2, that there exists an exceptional or extraordinary

¹ Applicant changed request from special exception to variance relief, pursuant to Zoning Administrator’s revised memorandum, dated January 16, 2014 (Exhibit 24).

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PAGE NO. 2

situation or condition related to the property that creates an undue hardship and a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party, and is appropriate in this case. The waiver is therefore **ORDERED** that this application is hereby **GRANTED**.

VOTE: **3-0-2** (Lloyd J. Jordan, Marnique Y. Heath, and Jeffrey L. Hinkle to GRANT;
S.Kathryn Allen and Zoning Commissioner not participating, not voting)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: March 20, 2014

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: 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, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 18711-A of 3112 13th Street, LLC, pursuant to 11 DCMR § 3103.2, for variance from the lot area requirements under subsection 401.3, to allow the conversion of a community based residential facility to a three-unit dwelling in the R-4 District at premises 3112 13th Street N.W. (Square 2848, Lot 33).¹

HEARING DATE: February 25, 2014
DECISION DATE: March 11, 2014

CORRECTED* SUMMARY ORDER

*Note: This order has been corrected to reflect the correct Applicant's name.

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 5.)

The Board of Zoning Adjustment ("Board") provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register*, and by mail to Advisory Neighborhood Commission ("ANC") 1A and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 1A, which is automatically a party to this application. The ANC submitted a letter in support of the relief being sought. (Exhibit 35.) The Office of Planning ("OP") submitted an untimely report with waiver of rules for late submittal recommending "no opposition" to the application. (Exhibit 36.) The District Department of Transportation ("DDOT") submitted a letter of "no objection" to the application. (Exhibit 30.)

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case, pursuant to § 3103.2, for a variance from the lot area requirements under subsection 401.3. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party. No letters in support or opposition of the application were received.

Based upon the record before the Board and having given great weight to the OP report filed in this case, the Board concludes that in seeking a variance from § 401.3, the applicant has met the burden of proving under 11 DCMR § 3103.2, that there exists an exceptional or extraordinary

¹ Applicant's revised application removed request for relief from Sec. 2001.3, Off-street parking requirements (Exhibit 41) to construct a three-unit structure instead of a four-unit structure as originally noticed.

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situation or condition related to the property that creates an undue hardship and a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party, and is appropriate in this case. The waiver is therefore **ORDERED** that this application, pursuant to Exhibit 42 – Updated plans, is hereby **GRANTED**.

VOTE: **4-0-1** (Lloyd J. Jordan, Jeffrey L. Hinkle, Marnique Y. Heath, and Peter G. May (by absentee) to GRANT; S.Kathryn Allen not participating, not voting)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: March 14, 2014

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO § 3129.9, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT

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DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: 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, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 18728 of Church of Jesus Christ, pursuant to 11 DCMR § 3104.1, for a special exception to permit a child development center (120 children and 27 staff) under section 205, in the R-1-B District at premises 3456 Pennsylvania Avenue, S.E. (Square 5528, Lot 30).

HEARING DATE: March 11, 2014

DECISION DATE: March 11, 2014

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum from the Zoning Administrator certifying the required relief.

The Board of Zoning Adjustment (“Board”) provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register*, and by mail to Advisory Neighborhood Commission (“ANC”) 7B and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 7B, which is automatically a party to this application. ANC 7B did not file a report or participate in the hearing of this application. The Office of Planning (“OP”) submitted a report in support of the application. (Exhibit 30.) The District Department of Transportation also filed a report and expressed that it has no objection to the application. (Exhibit 29.)

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception relief under § 205. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP report, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 205, that the requested relief can be granted, being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions

BZA APPLICATION NO. 18728
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of law. It is therefore **ORDERED** that this application is hereby **GRANTED, SUBJECT** to the approved plans, as shown on Exhibit 14, and the following **CONDITIONS**:

1. The number of children shall not exceed 120.
2. The number of employees shall not exceed 27.
3. The ages of the children shall be infants through five years old.
4. The hours and days of operation shall be 6:00 a.m. to 7:00 p.m., Monday through Friday.
5. The applicant shall provide 40 on-site parking spaces.
6. Outdoor playtime shall be staggered so that all of the children are not on the play area at one time. Diligent efforts shall be taken by the applicant to reduce noise in the play area and when the children are escorted through the neighborhood.
7. Drop-off and pick-up of children shall occur at the entrance into the building from the parking lot. Access to the site shall be via a one-way driveway accessed by the ramp from Pennsylvania Avenue and exiting onto 38th Street.
8. All landscaping on-site shall be maintained in a neat and healthy condition.
9. The property shall be kept free of refuse and debris at all times. Any outdoor trash storage containers shall be screened from view by fencing or landscaping.

VOTE: 5-0-0 (Lloyd J. Jordan, Anthony J. Hood, S. Kathryn Allen, Marnique Y. Heath, and Jeffrey L. Hinkle to Approve.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

ATTESTED BY: _____

SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: March 19, 2014

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

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PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: 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, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 18730 of Joseph and Janet Gregor, pursuant to 11 DCMR § 3104.1, for a special exception for a rear addition to a one-family row dwelling under section 223, not meeting the lot occupancy (section 403) and nonconforming structure (subsection 2001.3) requirements in the R-4 District at premises 651 F Street, N.E. (Square 861, Lot 204).

HEARING DATE: March 18, 2014

DECISION DATE: March 18, 2014

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission (“ANC”) 6C, and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6C, which is automatically a party to this application. ANC 6C submitted a letter in support of the application. The Office of Planning (“OP”) submitted a report and testified at the hearing in support of the application. The Department of Transportation submitted a report not objecting to the application. The Board denied a request for party status from Christopher Romney.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for a special exception under subsection 223. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 223, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application (pursuant to Exhibit 7 – Plans) be **GRANTED**.

BZA APPLICATION NO. 18730

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VOTE: **3-0-2** (Jeffrey L. Hinkle, Lloyd J. Jordan and Marnique Y. Heath to APPROVE. S. Kathryn Allen and the Zoning Commission Member not present, not voting.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

The majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: March 18, 2014

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: 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, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 18732 of WSD Capital LLC, pursuant to 11 DCMR § 3104.1, for a special exception under section 223, not meeting the lot occupancy requirements under section 403, the side yard requirements under section 405.9, and nonconforming structure requirements under subsection 2001.3, for a second story addition to an existing one-family detached dwelling in the R-1-B District at premises 859 Venable Place, N.W. (Square 2971, Lot 39).

HEARING DATE: March 18, 2014

DECISION DATE: March 18, 2014

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission (“ANC”) 4B, and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 4B, which is automatically a party to this application. ANC 4B submitted a letter in support of the application. The Office of Planning (“OP”) submitted a report and testified at the hearing in support of the application. The Department of Transportation submitted a report not objecting to the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for a special exception under subsection 223. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 223, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application (pursuant to Exhibit 9 – Plans) be **GRANTED**.

VOTE: **3-0-2** (Lloyd J. Jordan, Jeffrey L. Hinkle and Marnique Y. Heath to APPROVE.

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S. Kathryn Allen and the Zoning Commission Member not present, not voting.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

The majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: MARCH 18, 2014

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: 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, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

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